



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 9811-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 22 January 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted in the United States Marine Corps and commenced a period of active duty on 23 July 1959. On 23 February 1960, you were arrested by civilian authorities and convicted of auto theft. On 11 March 1960, you were found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA) totaling 14 days. On 29 March 1961, you were found guilty at your second SCM of violating UCMJ Article 86, for a three day period of UA. On 2 August 1961, you were found guilty at your third SCM of violating UCMJ Article 86, for a four day period of UA, and Article 134, for breaking restriction.

On 9 May 1963, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 91, for failure to obey an order to move your vehicle, and Article 92, for failure to obey a regulation by speeding 25 miles over the posted speed limit and for failure to have a valid driver's permit or license. You were sentenced to three months confinement, forfeitures of pay, and reduction to E-1. On 23 July 1963, you were found guilty in civilian traffic court on 14 citations in

connection with the operation of your vehicle and sentenced to 47 days in jail or the payment of a fine. Consequently, your Commanding Officer recommended that you be processed for discharge from the service by reason of unfitness. He summarized your repeated misconduct, which resulted in five non-judicial punishments (NJPs), three SCMs, one SPCM, and two civilian convictions during your short time in service. You were afforded your due process rights, all of which you waived. Ultimately, you were separated from the Marine Corps, on 6 September 1963, with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to: (1) your desire to upgrade your discharge characterization and change your type of discharge, (2) your youth at the time of the misconduct, (3) your assertion that you were not properly informed of the type of discharge you would receive, and (4) your contention that you overreacted after finding out that you were involved with a woman who cheated on you. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 20 November 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCMs, SPCM, and two civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated periods of UA and vehicle safety violations. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command and the discrediting effect it had on the Marine Corps. The Board determined that such misconduct is contrary to Marine Corps values and policy and places an unnecessary burden on fellow service members. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization of service.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in

mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/29/2024

