



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

█  
Docket No. 10056-23

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 filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 December 2023. 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 17 June 1977. On 6 November 1978, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 107, for making a false official statement, and Article 116, for breach of the peace by wrongfully pulling the fire alarm. You did not appeal this NJP.

On 5 February 1979, you began a period of unauthorized absence (UA) and you remained absent until 13 March 1979, for a total of 36 days. On 18 April 1979, you began a second period of UA, and remained absent until 23 November 1979, for a total of 219 days. Your command drafted General Court Martial (GCM) charges related to the two specifications of UA. On 28 November 1979, in response to the GCM charges, you submitted a request for discharge for the Good of the Service (GOS) in lieu of trial by court martial. You acknowledged your rights and stated that you understood that a discharge under Other Than Honorable (OTH) conditions may deprive you of virtually all rights as a veteran under both Federal and State legislation, and that you may expect to encounter substantial prejudice in civilian life. The separation authority granted your request,

and, on 18 December 1979, you were discharged from the Marine Corps for the GOS with an 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, your desire for a discharge upgrade and contentions that: (1) your wife was sick and pregnant, so you chose not to return from leave in order to care for her, and (2) when you returned to base and requested to make up the lost time, you were told that you could not. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or evidence of post service accomplishments in support of your request for relief.

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 NJP and GOS discharge request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy. The Board highlighted that, per your own request, you received a discharge for the GOS in lieu of trial by court martial. After receiving advice from your detailed counsel, you acknowledged your rights and the potential negative impact of an OTH characterization of service. You specifically stated “I do not want to return to duty in the Marine Corps, and I will request a Bad Conduct Discharge if I go to trial. I am requesting an Other Than Honorable discharge to avoid trial by Court-Martial because I do not want to return to duty.” The Board concluded that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial, thereby allowing you to avoid a possible court martial conviction and/or punitive discharge. In light of your request for discharge in lieu of trial, the Board determined that a characterization under OTH conditions remains appropriate in your case, as the basis of your separation was the commission of numerous acts constituting a significant departure from the conduct expected of a service member.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH. 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,

12/25/2023

