



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

█  
Docket No. 10097-23  
Ref: Signature Date

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█  
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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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 5 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 the 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 U.S. Marine Corps Reserve (USMCR) and began a period of active duty service on 30 June 1972. Your enlistment physical examination, on 8 June 1972, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Following the completion of your initial required active duty service, you were assigned to a USMCR unit drilling at █

On 2 February 1974, your command issued you a "Page 11" counseling warning for your unsatisfactory military appearance and tardiness. On 15 March 1974, you were charged by civilian authorities in █ with disorderly conduct and interfering with a police officer.

On 2 June 1974, your command notified you of their recommendation that you be assigned to

involuntary active duty because of your unsatisfactory participation in prescribed USMCR training. Unit records showed that you failed to attend and had twenty-two (22) unexcused USMCR drills between November 1973 and June 1974. On 17 June 1974, your command formally requested the Commandant of the Marine Corps (CMC) to assign you to involuntary active duty.

Unbeknownst to your command, on or about 1 July 1974, civilian authorities charged you with multiple counts of burglary in the third degree, and larceny in the fourth degree. You apparently were arrested while performing duties as a security guard, where you gained access to the master keys to certain insurance company office spaces and stole and sold their checks.

On 9 August 1974, the Director of the Marine Corps Reserve (DMCR) requested the Deputy Director of Personnel to issue you involuntary active duty orders for seventeen (17) months beginning in September 1974. On 30 August 1974, you were informed that you were to be assigned to involuntary active duty for seventeen (17) months, beginning on 6 September 1974, and that you were to report to █ in connection with a physical examination to determine your fitness for performance of duty.

On 8 September 1974, you were arrested by civilian authorities for a breach of the peace and for interfering with a police officer. On 12 September 1974, you pleaded guilty to three counts of burglary, with sentencing to occur sometime during October 1974.

On 23 October 1974, HQMC requested the CMC to suspend your involuntary active duty orders until your status with your civilian offenses was determined. On 31 October 1974, you were sentenced by civilian authorities for your burglary-related offenses.

On 25 November 1974, the DMCR requested that the USMC Personnel Management Division Director cancel your involuntary active duty orders. On 25 November 1974, the CMC cancelled your orders and directed your command to process you for an administrative separation.

On 19 December 1974, your command notified you of administrative separation procedures by reason of unfitness/misconduct due to a civilian conviction. On 23 December 1974, you acknowledged in writing the receipt of a notification of administrative separation proceedings by reason of misconduct due to your civilian conviction. You elected in writing to have military counsel appointed for you at your hearing before an administrative separation board (Adsep Board).

On 30 April 1975, an Adsep Board convened in your case. Following the presentation of evidence and any witness testimony, the Adsep Board members noted your burglary conviction and recommended that you be separated with an undesirable discharge by reason of misconduct (civilian by civil authorities). Ultimately, on 13 June 1975, you were separated from the USMCR for misconduct due to a civilian conviction with an undesirable (OTH) discharge characterization.

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: (a) you received an undesirable discharge after you made some bad decisions and let yourself end up with the wrong people, (b) it was never your intention to disgrace the Marine Corps, and (c) post-service you have turned your life around. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. 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,

1/18/2024

