



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

█  
Docket No. 10288-23  
Ref: Signature Date



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 application on 5 February 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 Marine Corps and commenced active duty on 25 May 1976. After a period of continuous Honorable service, you were transferred to the Marine Corps Reserve. On 13 November 1980, you reenlisted and commenced a second period of active duty.

On 5 October 1981, you received non-judicial punishment (NJP) for wrongful possession of marijuana. On 20 November 1981, you received Summary Court Martial (SCM) for willfully disobeying a lawful order, disrespectful language to a Sargeant, and breaking restriction. On 25 March 1982, you received NJP for unauthorized absence (UA). On 30 April 1982, you received NJP for UA. On 18 May 1982, you commenced a period of UA, during which you were declared a deserter, that ended in your surrender on 2 August 1982. On 17 September 1983, you were found guilty by a SCM for being absent from your appointed place of duty. On 1 March 1983, you were convicted at Special Court-Martial (SPCM) and sentenced to forfeitures

of pay, confinement at hard labor, and a Bad Conduct Discharge (BCD). After completion of all levels of review, you were issued a BCD on 13 December 1983.

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 to change your discharge characterization of service and your contentions that lack of support from your command, it affected your health due to stress, you did not realize an OTH would affect your Department of Veterans Affairs (VA) medical benefits, and you served honorably in the Marine Corps and Army Reserve on prior enlistments. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the 7 December 2023 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct. The Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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,

2/27/2024

