



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

■
Docket No: 8320-19
Ref: Signature Date

Dear ■

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 2 November 2020. The names and votes of the members of the panel 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.

You enlisted in the Marine Corps and began a period of active duty on 29 December 1971. On 24 October 1973, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for three periods of unauthorized absence (UA) totaling 116 days. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and on 16 November 1973, you received an other than honorable discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board carefully weighed all potentially mitigating factors, such as your record of service, and desire to have your characterization of service ungraded. The Board also considered your assertions that you were afforded the benefit of the doubt in your choice of MOS training, and when no one would listen or every try to help, you heeded the bad advice of "Barracks Lawyers" and kept going UA until the Marine Corps discharged you. Additionally, the Board considered that you have lived your life around heavy equipment, and have been steadily employed.

However, the Board concluded these factors and assertions were not sufficient to warrant a change to your characterization of service. In reviewing the circumstances of your separation and characterization of service, the Board considered the totality of the circumstances to determine whether relief is appropriate today in the interests of justice in accordance with guidance provided by the Under Secretary of Defense for Personnel and Readiness (Wilkie Memo of 25 July 2018). Accordingly, the Board considered and acknowledged your positive contributions to the Marine Corps, the length of your active duty service to our nation, and your post-discharge achievements. Even considering these potentially mitigating factors in accordance with the above referenced guidance, the Board did not find that relief was in the interest of justice. The Board concluded that your OTH discharge characterization was issued without error or injustice, and that corrective action is not warranted.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

12/19/2020

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Executive Director

Signed by:

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