



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

█
Docket No. 1734-24
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 10 May 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 and began a period of active duty service on 11 January 1972. Your enlistment physical examination, on 6 January 1972, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 31 May 1972, you commenced a period of unauthorized absence (UA) that terminated on 19 June 1972. On 23 June 1972, you received non-judicial punishment (NJP) for your 19-day UA. You did not appeal your NJP.

On 13 August 1972, you commenced another period of UA that terminated on 31 August 1972. On 13 September 1972, you received NJP for your 18-day UA. You did not appeal your NJP.

On 28 October 1972, you commenced another UA that terminated on 22 January 1973 with your

surrender to military authorities in ██████████, ██████████. On 20 February 1973, you commenced another UA. On 20 March 1973, your command declared you to be a deserter and dropped you from the rolls. Your UA terminated with your arrest on 26 January 1974.

On 8 March 1974, your command denied your request for an undesirable administrative discharge for the good of the service in lieu of trial by court-martial. On 26 March 1974, pursuant to your guilty pleas, you were convicted at a General Court-Martial (GCM) of two separate UA specifications (86 days, and 340 days, respectively). You were sentenced to confinement at hard labor for six (6) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 17 April 1974, the Convening Authority (CA) approved the GCM sentence as adjudged. On 21 May 1974 the U.S. Navy Court of Military Review affirmed the GCM findings and sentence as approved by the CA. On 1 August 1974, the Naval Clemency and Parole Board denied you any clemency and noted that you waived your right to request restoration to duty. Upon the completion of GCM appellate review in your case, on 23 August 1974, you were discharged from the Marine Corps with a BCD and were assigned an RE-4 reentry code.

On 15 October 1992, this Board denied your initial petition for discharge upgrade relief.

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: (a) you were young at the time and made a mistake that you regret now, and (b) you feel that you have lived a good life since your time in the service and you would like to have your discharge upgraded. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which consisted solely of the information you provided on your DD Form 149.

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 the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.81 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board noted that your record reflected two (2) NJPs, as well as a GCM conviction for multiple long-term UAs. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated

failure to conform to basic military standards of good order and discipline, all of which further justified your BCD characterization of service.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. The simple fact remained is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status on no less than four (4) separate times without any legal justification or excuse for a staggering total of approximately 463 days. The Board noted that you spent more days in a UA status than you actually served in a duty status.

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

5/20/2024

