



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

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Docket No. 3435-24

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 7 June 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 29 July 1975. Your enlistment physical examination, on 10 June 1975, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 23 June 1976, you received non-judicial punishment for both insubordinate conduct and for failing to obey a lawful order. You did not appeal your NJP.

On 2 February 1977, pursuant to a delivery agreement, the Marine Corps turned you over to civilian authorities in █ based on suspected charges of first degree murder and arson.

Once you were delivered to civilian authorities, you officially commenced an unauthorized absence (UA) period day-for-day while in civilian custody beginning on 2 February 1977.

On 14 June 1977, you were convicted of both first degree murder and arson in the ██████████ District Superior Court of ██████████. You were sentenced to life in prison. Your post-trial appeal of the sentence was denied and the Court denied your motion for retrial.

On 13 September 1983, your command notified you of administrative separation procedures by reason of misconduct due to your 1977 civilian conviction in ██████████. On 15 September 1983, while still incarcerated, you waived your rights in writing to consult with counsel and to request a hearing before an administrative separation board. Ultimately, on 7 October 1983, you were separated from the Marine Corps for misconduct due to a civilian conviction with an under Other Than Honorable conditions (OTH) discharge characterization.

On 15 August 2017, this Board denied your initial discharge upgrade request. Your primary contention to justify relief at such time was that your discharge was based on a civil conviction and not a military offense.

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 contention that the discharge authority exceeded their authority by issuing you an OTH for pre-enlistment civilian misconduct. 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 egregious 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.

The Board was not persuaded by your contention that the discharge authority improperly issued you an OTH discharge for pre-service misconduct. The Board concluded that the fact that the misconduct underlying your civilian conviction occurred pre-service was of no consequence since your conviction occurred while you were on active duty and your conviction formed the basis of your administrative separation. Moreover, the Board considered that your Marine Corps service effectively ended the day you were turned over to civilian authorities on 2 February 1977. Between such date and your ultimate discharge date on 7 October 1983, you also were technically in a UA status for over 2400 days; misconduct the Marine Corps could have included as part of your administrative separation processing.

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 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,

6/16/2024

