



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

██████████  
Docket No. 5848-24  
Ref: Signature Date

████████████████████  
████████████████████  
████████████████████

Dear ██████████

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 August 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 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U. S. Marine Corps and commenced a period of active duty on 28 September 1967. You received non-judicial punishment, on 2 December 1968, for unauthorized absence (UA) from appointed place of duty. On 5 December 1969, you were convicted at a special court martial (SPCM) for UA.

On 5 May 1970, you commenced a period of UA. While on UA, you were apprehended by civil authorities and charged with felony attempt to enter a building with intent to commit theft while armed with a deadly weapon, carrying a concealed weapon (knife), and destroy and injure

willfully, unlawfully, and intentionally. On 21 August 1970, you pleaded guilty to a lesser offense of attempted second degree burglary and were sentenced to six months of confinement. You were returned to military custody on 14 October 1970. As a result of the foregoing, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to civil conviction. At which point, you waived your right to consult with counsel and a hearing of your case before an administrative discharge board. Your commanding officer recommended your discharge due to your civil misconduct and your separation proceedings were determined to be sufficient in law fact. The separation authority approved the recommendation and directed your discharge with an Other Than Honorable (OTH) character of service. On 23 October 1970, you were so discharged.

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 upgrade your characterization of service and contentions regarding your reasons for going UA, that you were informed your discharge would automatically be upgraded after two years, you are seeking to become eligible for veterans disability and medical benefits, and you have worked as a truck driver for 43 years. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect it had on the Marine Corps. The Board also noted that there is no provision of federal law or in Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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 an OTH 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,

9/16/2024

