



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. 6020-24
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 16 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 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 began a period of active duty service on 11 April 1979. Your pre-enlistment physical examination, on 23 February 1979, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 19 September 1980, you commenced an unauthorized absence (UA). Your UA terminated with your arrest by civilian authorities in the ██████████ area on 3 March 1981. On 16 March 1981 you commenced another UA. Your command declared you to be a deserter on 15 April 1981. Your UA terminated with your arrest by civilian authorities, again in the ██████████ area, on 13 May 1982.

On 1 June 1982, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) in lieu of trial by court-martial for your two (2) separate UA offenses (165 days, and 423 days, respectively). As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple UAs, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged that if your request was approved, your characterization of service will be OTH.

On 25 June 1982, the Separation Authority approved your voluntary discharge request for the good of the service to escape trial by court-martial. On 30 June 1982, your separation physical examination noted no psychiatric or neurologic issues, conditions, or symptoms. Ultimately, on 7 July 1982, you were separated from the Marine Corps in lieu of a trial by court-martial with an OTH discharge characterization and were assigned an RE-4 reentry code.

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) your request was made to serve the ends of justice and was based on equity and fairness, (b) although your separation occurred in 1982, you were under an immense amount of stress at the time, (c) your post service contributions to society took decades to develop and now warrant relief from this honorable board, (d) marital issues and serious medical issues affected your family, which led to your UA status and OTH characterization of service, (e) BCNR should upgrade your discharge due to your remorse for your past actions, your post-service contributions to society, and to alleviate any future prejudice regarding your discharge status, and (f) you have experienced prejudice in your life prior to this petition, and you should not be punished further with a prejudicial label on your DD 214 for actions which you feel remorse. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to provide any supporting medical evidence of your claim. 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 of service was otherwise so meritorious as to deserve a discharge 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

simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than two (2) separate occasions totaling 588 days.¹ The Board determined that the record clearly reflected your 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 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 2.471 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 concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

8/23/2024

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¹ The Board noted that you spent approximately 49% of your enlistment in a UA status.