



**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. 7896-24  
8183-01  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 February 2025. 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 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) and the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo). The Board also reviewed the 10 January 2025 advisory opinion (AO) from a qualified medical professional and your 12 February 2025 rebuttal response.

The Board noted your previous request, Docket No. 8183-01, requested the same relief as your current submission, with the exception that your current submission requests the Board “order a medical evaluation board” to determine whether you were entitled to a medical discharge or retirement at the time of separation. Due to your newly requested relief and new evidence, the Board reconsidered your request to upgrade your discharge characterization from other than honorable (OTH) to general (under honorable conditions) and change your narrative reason for separation to “medical” or “secretarial authority” and considered your request for a medical evaluation board (MEB).

A review of your record shows you enlisted in the Marine Corps and commenced active duty on 2 October 1974. The following facts were further derived from your official military personnel file:

On 18 September 1974, the evaluating physician for your enlistment physical examination detected a heart murmur and consulted cardiology. The cardiology consultant detected a 1-2/6 systolic ejection murmur, noted the EKG was normal, and assessed the murmur as a functional murmur<sup>1</sup>. After reviewing the cardiologist's findings, the evaluating physician deemed you physically qualified for enlistment.

On 2 October 1974, you enlisted in the Marine Corps for a term of three years.

On 25 February 1975, nonjudicial punishment (NJP) was imposed for a 21-day period of unauthorized absence (UA) from 2 February to 23 February. You were awarded forfeiture of pay and restriction.

On 4 March 1975, you presented to Navy Regional Medical Center, [REDACTED], complaining of pain in both arms and chin, severe headaches, tingling sensation in your arms, and "heart pounding after running." A medical officer diagnosed you with "essential hypertension" and placed you on light duty pending a routine appointment with Internal Medicine for evaluation.

On 10 March 1975, the Internal Medicine provider's impression was "Fatigability of Questionable Etiology." You were placed on light duty until your follow-up appointment in two weeks.

On 25 March 1975, the medical provider noted the systolic murmur decreased with sitting up which was consistent with a functional heart murmur and assessed the murmur as a functional (benign) heart murmur.

On 1 April 1975, a medical provider, after noting the EKG had "early repolarization" and further assessing the murmur could be "unremarkable, but that other conditions such as Mitral Valve Prolapse and Idiopathic Hypertrophic Subaortic Stenosis needed to be ruled out," ordered an echocardiogram.

On 8 May 1975, NJP was again imposed for a two-day period of UA. You were awarded forfeiture of pay and restriction.

From 17 May 1975 to 17 September 1975 and again from 22 September 1975 to 4 April 1976, you were in an UA status.

A review of your record further indicates that prior to absenting yourself on 12 May

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<sup>1</sup> The AO of 10 January 2025 further states the functional murmur is also known as an "innocent murmur" as it is non-structural in nature, typically harmless, and doesn't require treatment.

1976, you had submitted a request for administrative discharge by reason of Good of the Service (GOS).

From 12 May 1976 to 11 August 1976, you were in an UA status which ended when you were apprehended. As part of your confinement, you were deemed “fit for confinement” after being medically evaluated and found to have normal vital signs, physical examination and no medical complaints.

On 30 August 1976, after consulting counsel and having acknowledged your understanding of your rights, you requested administrative discharge for the GOS. In your own handwriting, you stated “I do not want to return back to duty no matter what they try to do. I will request a BCD if I went to trial.” You further wrote “I am requesting an undesirable discharge to avoid trial by court martial because I do not want to return back to duty.” Your handwritten note further stated “I cannot adjust to the Marine Corps” and “I do not like nothing whatsoever about the Marine Corps and also I do not want to be employed by the Marine Corps if they [paid] me a thousand dollars a week.” In the closing of your handwritten request for an undesirable discharge, you acknowledged that your counsel had explained your rights to you and advised you that you “will lose most Government benefits” and it will be “quite difficult to obtain future employment.”

By memorandum of 14 September 1976, the Assistant Chief of Staff, Staff Judge Advocate, finding the request sufficient in law and fact, recommended Commanding General, Marine Corps Base, [REDACTED], approve your request for an undesirable discharge in order to avoid trial by special court-martial (SPCM).

By his endorsement of 14 September 1976, the Separation Authority approved your request for discharge for the GOS in lieu of trial by SPCM.

On 29 September 1976, a medical officer found you physically qualified for discharge.

On 1 October 1976, you were discharged for the GOS in lieu of trial by SPCM with an OTH characterization of service and assigned a RE-4 (not recommended for reenlistment) reentry code.

On 4 March 2002, a previous Board denied your request for an upgraded discharge characterization. The Board “weighed all potentially mitigating factors, such as your youth and immaturity and the contention that your fear of possible heart surgery caused your unauthorized absences.” However, the Board determined those factors were insufficient to warrant recharacterization “given your request for discharge to avoid trial for UA periods totaling about 13 months.”

In your current request for relief, through counsel, you raise the following contentions summarized below:

- (1) You should not have been allowed to enlist in the Marine Corps because of your “heart defect” nor would you be allowed to enlist today.
- (2) You “panicked and went AWOL.” Specifically, you contend that your “background as an immigrant provides important context to [your] decision to go AWOL” because “joining the Marines did not live up to the ideal you imagined.” “Struggling with health issues and underperforming as a Marine, you panicked and went AWOL.”
- (3) Today, you would have been entitled to a MEB to determine your fitness for continued service. You further contend that at the time of your separation in 1975, this option was not available and “notably, a MEB would dual track an involuntary separation.”
- (4) Your medical records indicate the heart murmur was service disqualifying because it caused you “to be unable to perform basic functions as a Marine.”
- (5) You understand your decision to go AWOL has consequences, and you have lived with those consequences for the past 40 years. During that time, you have continued to demonstrate commitment to your family and community.<sup>2</sup>
- (6) The Marine Corps “owed you a duty” and that duty “started with not allowing physically unfit individuals to join the military.” However, since you were permitted to enlist, the Marine Corps’ duty shifted to a “duty of care” which “includes the duty to properly evaluate you and discharge you justly if you are physically unable to continue to serve.”
- (7) You are entitled to relief under the Wilkie Memo for the following reasons<sup>3</sup>:
  - (a) The punishment of an OTH discharge was too harsh given the extenuating and mitigating circumstances, specifically, your heart condition.
  - (b) Your punishment is disparate compared to what similarly situated Marines would face today.
  - (c) A significant amount of time has passed since your misconduct.

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<sup>2</sup> In support of this contention, you submitted advocacy letters from numerous friends, your daughter, a judge, and two employers.

<sup>3</sup> These contentions were submitted in response to your review of the Vazirani Memo provided to you on 6 August 2024.

(d) Given your age and health, you need Department of Veterans Affairs services in order to receive treatment for your heart condition<sup>4</sup>.

(8) This Board is not bound by the previous Board's 2002 decision<sup>5</sup>.

(a) Significant changes have been made since 2002 in the way this Board evaluates equity and clemency – most notably, the Wilkie Memo.

(b) You have lived under the stigma of your discharge characterization for 48 years.

(c) You contend that to “leave the OTH in place” punishes you more than necessary because you have proven, over the last 50 years, to be successfully rehabilitated.

As a matter of procedure and equity, your petition was reviewed by a qualified mental health provider. The AO author, after reviewing the available records, determined there was insufficient evidence to support your contention that you suffered from a medical health condition that prevented you from reasonably performing the duties of your office, grade, rank, Military Occupational Specialty (MOS), or warranted referral to the DES for adjudication of fitness for continued service. Specifically, the AO notes the following:

(1) Your in-service diagnosis of Functional Heart Murmur is documented in your service medical records, which include electrocardiograms, laboratory tests, and chest x-rays. Further, the AO notes you were evaluated on several occasions by your primary care physicians, medical staff, and specialty physicians in Internal Medicine and Cardiology; all rendered the same diagnoses. A review of your medical record further indicates that other possible cardiac conditions were mentioned, evaluated, and “ruled out.” The AO concluded there was no evidence of additional medical or mental health conditions that rendered you unable to adequately perform your occupational requirements.

(2) When your Functional Murmur was detected as an incidental and asymptomatic finding on your enlistment physical examination, you were appropriately referred for cardiology consultation and found to have a functional murmur. This was not deemed a physically disqualifying condition, and the examining physician deemed you physically qualified for enlistment.

(3) During your enlistment, you were evaluated on several occasions and appropriately referred to Internal Medicine and Cardiology for evaluation. The AO noted you received appropriate medical work-up including serial physical examinations, laboratory studies, radiology studies, electrocardiograms, and cardiac echocardiogram, all resulting in

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<sup>4</sup> The Board noted the record contains no evidence – and you submitted none – reflecting post-service medical concerns.

<sup>5</sup> These contentions were submitted in response to the unfavorable AO provided to you on 10 January 2025.

diagnoses of Essential Hypertension (elevated blood pressure) and Functional Systolic Heart Murmur. The AO further noted that neither diagnosis required treatment.

(4) There is no evidence in your clinical record of a diagnosed cardiac condition that warranted medical treatment, much less an operation, or that you were ever presented with those choices.

(5) Your condition was not considered occupationally impairing as evidenced by the fact your evaluating and treating physicians never placed you on a Limited Duty Board, referred your case for a MEB, or enrolled you in the Disability Evaluation System (DES) with the intent to have the Physical Evaluation Board adjudicate your condition. Except for brief periods of light duty – which physicians placed you on pending referral appointments or the return of laboratories or other diagnostic studies – you remained in a full duty status.

(6) There was no evidence of any ongoing clinical symptoms indicative of a debilitating or impairing condition – not in the available records nor provided by you.

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. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application. Further, in accordance with the Vazirani memo, the Board first applied liberal consideration to your contention your OTH discharge was in error/unjust to determine whether discharge relief was appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

The Board carefully reviewed your contentions and the material you submitted in support of your petition, to include the advocacy letters and description of your post-service family life, and determined there was insufficient evidence to grant your request for an upgrade to your discharge characterization or change in your narrative reason for separation. In reaching its decision, the Board observed that it relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In your case, the available records demonstrate that, with respect to your discharge, you availed yourself of substantial rights, including those of an assigned legal counsel, and, in your own careful handwriting, requested administrative discharge for the GOS in lieu of SPCM. The Board noted you were quite emphatic that you did not want to serve in the Marine Corps “even if they [paid you] a thousand dollars a week.” Even applying liberal consideration and the Wilkie Memo, this Board, noting the 418 days<sup>6</sup> you were in an UA status, agreed with the previous Board’s findings that considerable clemency has already been extended to you. By the Marine Corps’ approval of your request for discharge for

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<sup>6</sup> 454 days is the total of the days listed on your Certificate of Release or Discharge from Active Duty (DD Form 214) which includes 418 days of UA. Stated another way, from 2 October 1974, when you commenced active duty, until your discharge on 1 October 1976, you served only eight months and 27 days in active service.

the GOS in order to escape court martial, you escaped the possibility of confinement at hard labor and a punitive discharge. Additionally, this Board also concluded that you received the benefit of your bargain when your request for administrative discharge was granted and you should not be permitted to change that now, even considering the 48 years during which you contend you've "lived under the stigma." The Board concluded that your discharge was proper as issued and no change is warranted.

The Board separately and carefully reviewed your request for this Board to order a MEB to review your medical records and determine whether you were entitled to a medical discharge or retirement at the time of separation. The Board noted your contentions that you should not have been allowed to enlist in the Marine Corps "because of a heart defect" and that, in the same situation today, you would be entitled to a MEB because "the heart murmur alone is service disqualifying." Relying on the AO, the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the DES with a finding of unfitness, a service member must be unable to perform the duties of his office, grade, rank or rating/MOS as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. Specifically, substantially concurring with the AO, the Board noted you were found physically qualified for enlistment after your diagnosis of Functional Heart Murmur; evaluated on several occasions by primary care physicians, medical staff, and specialty physicians in Internal Medicine and Cardiology who rendered the same diagnosis; electrocardiograms, laboratory tests, and chest x-rays supported the diagnosis; and other possible cardiac conditions were "ruled out" after thorough evaluation. Applying the presumption of regularity, the Board determined that if your Functional Heart Murmur warranted your referral to a MEB, you would have been so referred. You were, in fact, found to be physically qualified for separation during your separation physical examination.

Further, assuming *arguendo* that your Functional Heart Murmur warranted referral to DES, the Board noted that in many circumstances, including yours, administrative separation processing for misconduct would likely have taken precedence over disability processing. The Board, noting your contention you "panicked" because you did not want to have heart surgery, determined your alleged "fear" is not supported by the record. Relying on the AO, the Board noted there was absolutely no indication surgery was even being considered and further noted you did not offer that explanation in your handwritten request for discharge. Additionally, the Board tried to envision a situation where one would want to evade heart surgery and found your contention that you "panicked and went AWOL" to not be credible. The Board concluded the proximate reason for your discharge was due to your own request in order to avoid trial by SPCM for your three extensive periods of UA from 17 May 1975 to your apprehension on 27

July 1976. This requested administrative separation processing for misconduct would have taken precedence over your disability processing.

Accordingly, given the totality of the circumstances, the Board determined 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,

3/14/2025

