



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

█
Docket No. 8044-24

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 15 November 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 22 January 1974. Your pre-enlistment physical examination, on 19 September 1973, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 20 May 1974, you commenced an unauthorized absence (UA) that terminated on 11 June 1974. On 16 June 1974, you received non-judicial punishment (NJP) for your 22-day UA. You did not appeal your NJP.

On 28 June 1974, you commenced another UA. Your command declared you to be a deserter. Your UA terminated with your arrest by civilian authorities on 21 July 1974. On 13 September 1974 you were convicted at a Summary Court-Martial (SCM) for your 23-day UA. You were sentenced to forfeitures of pay and confinement at hard labor for thirty (30) days. On 8 October

1974, the Convening Authority approved the SCM sentence but suspended the sentence for three (3) months.

On 8 September 1975, you commenced another UA. Your command declared you to be a deserter. Your UA terminated on 11 November 1975.

On 9 December 1975, you subsequently 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: (a) your 75-day UA, and (b) the wrongful possession of marijuana. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA and drug offense, 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 guilt of your UA and drug offenses, and also acknowledged that if your request was approved, your characterization of service will be OTH. You expressly acknowledged and understood that if an OTH was approved, you may be deprived of virtually all veteran's rights otherwise available to you under both federal and state law, and that you may expect to encounter substantial prejudice in civilian life in situations wherein the character of your service in, and subsequent discharge from, any branch of the Armed Forces may have a bearing.

On 10 December 1975, the Staff Judge Advocate to the Separation Authority (SA) determined that your discharge proceedings were legally and factually sufficient. On 11 December 1975, the SA approved your voluntary discharge request for the good of the service in lieu of trial by court-martial. On 12 December 1975, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 15 December 1975, you were separated from the Marine Corps in lieu of a trial by court-martial with an undesirable 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 to qualify for veterans' benefits. You contend that: (a) you "voluntarily" left the Marines because you were going through a very hard time both medically and mentally, (b) you developed a urine problem, which you believe was directly from the toxic water at Camp Lejeune, (c) you also had bad back pain due to the physical nature of your Marine Corps job, (d) you were also having severe marital problems which impacted your mental health tremendously, and you believe your mental problems were undiagnosed at the time, (e) you never did anything with any malice in the Marine Corps, (f) a General told you that you could be discharged voluntarily because of all your issues at the time, so you accepted that, (g) you have very low income now and many medical and mental problems that you desperately need help with, (h) you are sorry you did not handle your stressors better back then, but you are a better man now, and (i) please grant you a discharge upgrade so that you can try to get some help and live longer. For purposes of clemency and equity consideration, the Board considered the totality 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 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 noted that marijuana possession is still against Department of Defense regulations and its possession or use in any form is still not permitted while serving in the military. 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 three (3) separate occasions totaling 109 days. 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.

Regarding your contention you suffered from the effects of tainted water while stationed at Camp Lejeune, the Board concluded that you did not submit any convincing evidence to support your claim. Notwithstanding, the Board noted that if you indeed experienced any health-related issues due to contaminated Camp Lejeune water, you may not be prohibited from receiving VA benefits due to your OTH. As long as you did not receive a dishonorable discharge and meet certain qualifying criteria, you are potentially eligible to receive certain VA benefits related to tainted water at Camp Lejeune.¹

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 2.81 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 concluded that your conduct marks during your active duty career were a direct result of your substandard performance of duty and cumulative misconduct which further justified your OTH discharge characterization.

Additionally, 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. Finally, the Board found no evidence to support your claims that you left the Marine Corps voluntarily. The Board observed that you provided no evidence, other than your statement, to substantiate your contentions.

¹ <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/camp-lejeune-water-contamination/>

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,

11/25/2024

█