



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

██████████  
Docket No. 8997-24

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 6 December 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 2 May 1972. Your pre-enlistment physical examination, on 2 May 1972, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 21 August 1972, you commenced a period of unauthorized absence (UA) that terminated on 24 October 1972. On 1 December 1972, pursuant to your guilty plea, you were convicted at a Special Court-Martial (SPCM) of your 64-day UA. You were sentenced to confinement at hard labor for forty-five (45) days and forfeitures of pay. On 4 January 1973, the Convening Authority approved the SPCM sentence.

On 2 February 1973, you commenced another UA that terminated on 8 September 1974 with your arrest by civilian authorities in ██████████. Following your return to military

authorities, Headquarters Marine Corps (HQMC) directed you to report to your Force Troops Personnel Officer not later than 0800 hours, 4 October 1974 for processing and transportation arrangements to the ██████████ located at ██████████. Upon reporting to the ██████████, you were to be given an opportunity to: (a) request a discharge for the good of the service in accordance with existing Department of Defense regulations, (b) to reaffirm your allegiance to your country, and (c) to pledge to perform alternate service for a period not to exceed twenty-four (24) months. Upon the completion of the foregoing procedures, to include a medical examination, you would be issued an undesirable (OTH) administrative discharge.

You reported as directed to ██████████ on or about 4 October 1974. On 14 October 1974, you submitted a voluntary written request for an undesirable discharge for the good of the service pursuant to the provisions of Presidential Proclamation No. 4313 ("Proclamation"). 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 indicated you were making this request on your own free will and were not subject to any coercion. You understood that your absence was characterized as a willful and persistent unauthorized absence which rendered you triable under the Uniform Code of Military Justice and could lead to the imposition of a Bad Conduct Discharge (BCD). You acknowledged that if your request was approved, your characterization of service will be an OTH. You acknowledged that an undesirable/OTH discharge may deprive you of virtually all veterans' benefits based upon your current period of active service, and that you may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of discharge received therefrom may have a bearing. You understood that within fifteen (15) days of the date of receipt of the OTH discharge certificate you were required to report to your State Director of Selective Service to arrange for performance of alternate service. You further understood that satisfactory completion of such alternate service will be acknowledged by issuance of a Clemency Discharge Certificate (CDC). You also expressly acknowledged that such CDC would not alter your ineligibility for any benefits predicated upon his military service and receipt of an OTH characterization of service.

On 14 October 1974, the commanding officer of the ██████████ approved your request for an undesirable discharge for the good of the service and directed an OTH characterization in accordance with the Proclamation. Ultimately, on 14 October 1974, you were separated from the Marine Corps with an "Under Conditions Other Than Honorable," aka OTH discharge characterization, and were assigned an RE-4 reentry code. Your DD Form 214 noted in Block 27 that you agreed to serve twenty-four (24) months of alternate service pursuant to the Proclamation.

On 28 January 1977, the Selective Service System (SSS) notified you that you satisfactorily completed your assigned period of alternate service in the Reconciliation Service Program (RSP). The SSS sent you a Certificate of Completion and informed you that you were now entitled to consideration for a CDC.

On or about 9 March 1977, you received a clemency discharge and CDC pursuant to the

Proclamation. The CDC restored any federal civil rights lost upon your OTH discharge for your long-term UA. The CDC also restored certain state civil rights, such as your right to vote and to obtain a license to work in certain occupations from which you may have been barred by state law. Notwithstanding, the clemency discharge and CDC did not remove the bar to Department of Veterans Affairs benefits.

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 you were upgraded as a result of the CDC. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application, which included your DD Forms 214 and 215.

After thorough review, the Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy contained no known errors based on your precise factual situation and circumstances at the time of your 1974 OTH discharge. The board noted that the issuance of a clemency discharge to an individual discharged from the naval service under OTH conditions does not effect a subsequent change in the characterization of that service. Because a clemency discharge issued to service member does not effect a change in your original undesirable OTH characterization, such OTH characterization remains part of your military record. Moreover, although your record now includes a clemency discharge, such a discharge is a “neutral” discharge, neither Honorable nor less than Honorable, and serves, in part, to restore certain civil rights lost as previously mentioned above.

The Board noted that your military record contains a DD Form 215 (Correction to DD Form 214, Report of Separation from Active Duty) that specifically stated:

“DD Form 1953 issued in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation No. 4313.”

This specific notation on the DD Form 215 is precisely how the Department of the Navy reflected the completion of RSP alternate service on other service members’ and your DD Form 214. Your clemency discharge and CDC do not change your original OTH characterization of service.

As far as the possibility to receive a more favorable discharge characterization based on clemency and equity considerations, 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 during a time when the U.S. was at war, and you went into a UA status without any legal justification or excuse on no less than two (2) separate occasions totaling 647 days. The Board determined that the record clearly reflected your misconduct was

intentional and willful, and 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 1.50 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 serious 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. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your original discharge. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record liberally and 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,

12/30/2024

Executive Director

Signed by: