



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. 10384-24
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 24 February 2025. 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 Marine Corps and commenced active duty on 2 October 1974. After two periods of continuous Honorable service, you immediately reenlisted on 4 August 1981 and commenced your final period of active duty. On 25 February 1982, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 26 May 1982, you commenced a period of unauthorized absence that ended on 28 May 1982. On 11 June 1982, you commenced a period of unauthorized absence that ended on 14 June 1982. On 5 July 1982, you commenced a period of unauthorized absence that ended on 15 July 1982. On 24 August 1982, you received non-judicial punishment (NJP) for missing movement through design, four specifications of UA, and three specifications of disrespectful speech and actions toward a commissioned officer. On 21 September 1982 you commenced a period of UA that ended on 6 October 1982. On 24 October 1982, you commenced a period that ended on 26 October 1982. On 3 January 1983, you commenced a period of UA that ended in your

apprehension by civil authorities on 31 January 1983. On 3 February 1983, you commenced a period of UA that ended in your apprehension by civil authorities on 14 April 1983. On 15 April 1983 you commenced a period of UA that ended in your apprehension by civil authorities on 10 February 1984.

Upon your return, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the aforementioned periods of UA. Prior to submitting this 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. On 6 March 1984, your medical record indicated that you were treated for a reported assault that occurred on 5 March 1984. Subsequently, your request for separation in lieu of trial by court-martial was granted, your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge, and you were so discharged on 27 March 1984.

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 change your discharge characterization of service and your contentions that your missed movement should have been excused because you were being treated on 6 March 1984 for injuries from an assault, that you escaped from your escorts because you felt like you were running for your life after being told you were being charged with missing movement, you were not given an opportunity to speak with a lawyer, and that, post-service, you have been diagnosed with post-traumatic stress disorder PTSD. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the 21 October 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board further noted that you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board determined the presumption of regularity applies in your case and concluded you were properly discharged based on your voluntary request in order to avoid a trial by court-martial. The Board 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.

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 and 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,

3/19/2025

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Executive Director

Signed by: ■