



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

██████████
Docket No. 10689-24

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 application on 20 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 4 March 1974. Your pre-enlistment physical examination, on 1 February 1974, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or history.

On 7 May 1975, you commenced an unauthorized absence (UA) when you failed to comply with your permanent change of station orders. Your UA terminated with your surrender to military authorities in the greater ██████████ area on 8 July 1975.

On 25 July 1975, you received non-judicial punishment (NJP) for your 62-day UA. You did not appeal your NJP. On 5 August 1975, you received NJP for another UA. You did not appeal your second NJP.

On 18 August 1975, you commenced another UA and, while you were in a UA status, your command declared you to be a deserter. Your UA terminated on 14 October 1975.

On 13 November 1975, 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 57-day UA offense. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, 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 20 November 1975, the Staff Judge Advocate to the Separation Authority (SA) determined that your separation proceedings were legally and factually sufficient. On 25 November 1975, the SA approved your voluntary discharge request for the good of the service in lieu of trial by court-martial. Your separation physical examination, on 3 December 1975, noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 5 December 1975, 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.

On 8 May 1979, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. You failed to provide the NDRB with any clearly and specifically stated contentions or issues in your application relating to the equity or propriety of your OTH discharge.

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 change to your reason for separation to Secretarial Authority. You contend that: (a) you would like to take this opportunity to apologize to the Board and the U.S. Marine Corps, as a whole, for your misconduct, (b) you understand that Marines are held to a high standard of personal conduct, and your actions fell far below such standard, (c) you were only seventeen years old when you enlisted, and were not yet prepared for the rigors of Marine Corps service, (d) you have lived with the shame of your misconduct for fifty (50) years, (e) you made a terrible decision to go UA and remain so for nearly two months in 1975 and you were properly punished at the time for your misconduct; but you have been more than punished enough for your actions, (f) despite the significant passage of time, you are still haunted by your OTH discharge, and you now seek the opportunity to restore your honor and reclaim your good name, and (g) you have been improperly stigmatized and harmed by your OTH discharge. For purposes of clemency and equity consideration, the Board considered the totality 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 a second time during your relatively short enlistment without any legal justification or excuse for 57 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.

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 3.033 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 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,

1/13/2025

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