



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. 11273-24
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 10 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 5 September 1975. On 8 January 1976, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 26 May 1976, you commenced a period of UA that ended in your apprehension on 20 January 1977. On 20 February 1977, you commenced another period of UA that ended in your surrender on 24 May 1978. On 9 June 1978, you commenced a final period of UA that ended in your surrender on 7 August 1978.

On 6 September 1978, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for your periods of UA. Prior to submitting this request, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your request was granted, your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge, and you were so discharged on 20 September 1978.

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 to qualify for veterans' benefits and your contentions that your mother was gravely ill, you were denied leave to take care of her, went UA, and reported for duty when she recovered. You also asserted post-discharge accomplishments of thirty-four years as an emergency dispatch operator, para-transit driver, and emergency medical technician. For purposes of clemency and equity consideration, the Board considered your statement, character references, and resume you provided.

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 request for separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated extended UA and the likely negative impact your conduct had on the good order and discipline of your command. The Board considered that, in three years and fifteen days of active duty, you were UA for a total of approximately two years and six days. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct; which led to your request for an undesirable discharge to avoid trial for your offenses. The Board also 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 noted that your contention that you were UA to care for your gravely ill mother is inconsistent with your statement to the separation authority while in-service.

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. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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,

3/12/2025

