



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: 7128-21
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 21 January 2022. 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You took your oath of office to become a Midshipman in the U.S. Naval Academy (USNA) on 1 July 1993. Upon graduation from the USNA, on 23 May 1997 you commissioned as a Second Lieutenant (O-1) in the U.S. Marine Corps. On 1 June 2001, you promoted to the rank of Captain (O-3).

On or about 17 August 2001 you were involved in an alcohol-related incident in █.

According to the Commandant of the Marine Corps (CMC) in his Report of Nonjudicial Punishment to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)), on the afternoon and evening of 17 August 2001 you and another officer commenced unauthorized liberty during a port call in ██████████. Being on unauthorized liberty put you into an unauthorized absence (UA) status. You and the other officer "bar-hopped" from about 1600 until 0100 hours, 18 August 2001. At about 0100 hours, you wrongfully grabbed the buttocks of a passing enlisted female Sailor. An altercation ensued wherein you became belligerent. ██████████ police arrived and you attempted to leave the scene. You remained at the scene but was verbally abusive and belligerent in demeanor. You were arrested for disorderly conduct and public intoxication and was taken to a police substation. You resisted the arrest and was therefore also charged with resisting arrest. At the police substation you continued to resist, kicking furniture and lockers, and shouting profanity and sexist invective to the ██████████ police, of which one was a female officer. You were transported from the substation to a detention center. You vigorously resisted the transfer and had to be head-locked and carried. Once at the detention center you continued to carry on, shout profanity at ██████████ police, and spit on the floor.

On 27 November 2001 you submitted a qualified resignation request to the Secretary of the Navy in lieu of administrative separation processing for cause. You expressly understood and acknowledged that if accepted, you could receive a general (under honorable conditions) (GEN) characterization of service. You also acknowledged your resignation request was based on misconduct/substandard performance of duty that involved UA, resisting apprehension, and conduct unbecoming an officer and a gentleman. As a result of this course of action, you were spared having to show cause for retention at a Board of Inquiry (BOI) composed of senior USMC officers and the negative ramifications of potentially receiving an other than honorable (OTH) characterization of service at such BOI.

On 10 January 2002 you received non-judicial punishment (NJP) from the Commanding General, ██████████ MARFORPAC, MCAS Miramar. In accordance with your pleas, you were found guilty of UA, conduct unbecoming an officer for grabbing the buttocks of a female enlisted petty officer, and resisting arrest. You were awarded as punishment a punitive letter of reprimand (PLR), restriction for thirty days (partially suspended), and forfeitures of pay for two months (partially suspended). You did not appeal your NJP or PLR. You also received an adverse fitness report for the reporting period ending 10 January 2002 which did not recommend you for promotion.

On 22 March 2002 the CMC recommended to ASN(M&RA) that your qualified resignation request be approved and you receive a GEN characterization of service. On 19 April 2002 ASN (M&RA) approved the CMC's recommendation. Ultimately, on 15 May 2002 you were discharged from the Marine Corps for "unacceptable conduct" with a GEN characterization of service.

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: (a) your case was one of equity, positive analysis of the equitable factors, and post-service conduct, (b) notwithstanding your alcohol-related incident your quality of service was honorable, (c) given your unblemished record of post-service conduct, your positive attributes discussed in your fitness reports, the opinion of your final Reviewing Officer that you separate under honorable conditions, your character references, and the mandate of the Board to allow people the opportunity to make amends for any misconduct while in service, you should be granted your requested relief. However, based upon this “Wilkie” review, the Board still concluded that given the totality of the circumstances your request does not merit relief.

First and foremost, the Board unequivocally determined that your discharge from the Marine Corps and separation with a GEN characterization was warranted under the totality of the circumstances. The Board determined that the substantiated misconduct from your NJP demonstrated you had minimal potential to contribute positively to the Marine Corps as an officer responsible for the care and well-being of enlisted Marines. Accordingly, the Board found that your qualified resignation and discharge in lieu of processing for an administrative separation at a BOI with a potential OTH separation to be appropriate under the totality of the circumstances.

Additionally, the Board did not believe that your record 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, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire contractual obligation, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for a commissioned officer’s discharge characterization. The Board determined that characterization under OTH or GEN conditions is generally warranted for officer 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 commissioned officer. The Board also determined that the record clearly reflected your misconduct was willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your character, post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of a GEN characterization of service and no higher. In the end, the Board

concluded that you received the correct discharge characterization and narrative reason for separation based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

2/11/2022

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Executive Director

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