



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

█  
Docket No: 448-22  
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 23 February 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 entered active duty with the Marine Corps on 22 January 1982. During the period from 25 April 1983 to 3 August 1984, you received four instances of non-judicial punishment (NJP) for four specifications of willfully disobeying a lawful order, four specifications of disobeying a lawful order, loss of government property, and failure to go at time prescribed to appointed place of duty. During the period from 14 April to 12 June 1985, you received three NJPs for two specifications of being disrespectful toward a non-commissioned officer (NCO), three specifications of disobeying a lawful order, loss of government property, failure to go to appointed place of duty, and failure to obey a lawful order.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 16 August 1985, you were so discharged.

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 upgrade your discharge, contentions that your discharge did not warrant an OTH characterization of service, you were not a troublemaker, earned several awards, and served honorably. The Board also noted your contentions that your discharge was the result of a personal vendetta, you were on your supervisor's hit list, and your conduct has been exemplary since discharge.

The Board noted that the record contains documented evidence, which is contrary to your contention that your discharge did not warrant an OTH characterization of service. The record clearly shows that you received seven NJPs prior to being discharged and waived your rights to present your case to an administrative board (ADB). The Board noted that a Marine's service is characterized at the time of discharge based on performance during the current enlistment. The Board also noted that there is no evidence in your record, and you submitted none, to support your contentions that your discharge was the result of a personal vendetta and you were on your supervisor's hit list. Lastly, the Board noted while commendable, your post service conduct does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your seven NJPs, outweighed these mitigating factors. As a result, when weighing the seriousness and frequency of your misconduct against your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Marine and merits an Other than Honorable characterization of service. 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,

3/3/2022

