



8 November 1985, you began a second period of UA which lasted eight days. On 18 November 1985, you received a second NJP for two periods of UA and disrespectful in language towards a noncommissioned officer. On 25 November 1985, you received a third NJP for failure to report to your prescribed place of duty and violation of a lawful order by being in possession of alcohol while in the barracks.

Unfortunately, the documents pertinent to your court-martial conviction and discharge are not in your official military personnel file (OMPF). Notwithstanding, 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Marine on 9 June 1987, with a Bad Conduct Discharge (BCD) based on a special court martial (SPCM) conviction. In addition, the Board noted in your record that you submitted an appellate leave request on 3 September 1986.

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 contentions that you were erroneously involved on a fight with commissioned officers wearing civilian clothes, that you were receiving counseling and therapy for anger management prior to the incident, that your anger issues were attributed to the treatment you received as a Marine, and that your BCD was going to be upgraded six months following your separation from service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined your conduct showed a complete disregard for military authority and regulations. Further, the Board 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. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded 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 the 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,

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Executive Director

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