



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

██████████  
Docket No: 3555-22

Ref: Signature date

████████████████████  
██████████████████  
██████████████████

Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 27 July 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, 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 on 14 September 1994 and began a period of active duty. On 5 June 1996, you were counseled for failure to comply with military rules and regulations. You were advised that failure to take corrective action could result in administrative separation. On 1 July 1995, you received nonjudicial punishment (NJP) for stealing money from a fellow Marine. On 20 May 1996, you began a period of unauthorized absence (UA) which lasted one day. From a period beginning on 4 June 1996 to 17 July 1997, you received NJP in four occasions for the following offenses: a period of UA, three periods of UA from appointed place of duty, disrespectful in language, disrespect towards a noncommissioned officer's (NCO) spouse and son, failure to properly prepare for inspection, insubordinate in conduct towards a senior NCO, two instances of failure to obey written orders, and breaking restriction. As a result of your misconduct, you were notified of administrative separation processing for pattern of misconduct. On August 1997, you elected to waive all your procedural rights. On 12 August 1997, your administrative separation proceedings were determined to be sufficient in law and fact. On

18 August 1997, the discharge authority approved and ordered an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. You were subsequently discharged.

Unfortunately, some documents pertinent to your administrative separation 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.

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 contentions that you faced racial discrimination, completed welding school upon your discharge, and established your own successful lawn care 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. 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 an OTH characterization. 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,

8/15/2022

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Executive Director

Signed by: █