



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: 3905-22
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 25 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, 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 enlisted in the Marine and began a period of active duty on 30 May 1985. On 15 September 1985, you commenced a period of unauthorized absence (UA) until you surrender 25 days later on 10 October 1985. On 16 October 1985, you were counseled regarding the aforementioned UA and advising you that further violations of the UCMJ (Uniform Code of Military Justice), may result in processing for administrative separation. You were afforded to submit a statement in rebuttal to this counseling and chose not to do so. On 25 October 1985, you were found guilty at a summary court-martial (SCM) of the UA and sentenced to confinement at hard labor for 30 days, forfeiture of \$250.00 pay per month for one month, and reduction in rank to E-1. On 20

November 1985, you commenced a second period of UA which lasted 81 days until you surrendered on 9 February 1986. As a result, on 26 March 1986, you were found guilty at a second SCM for said UA and sentenced to forfeit \$400.00 pay per month for one month.

As a result of your misconduct, on 28 March 1986, you were notified of your commanding officer's (CO) intent to administratively process you for discharge by reason of pattern of misconduct (POM), at which time you waived your right to consult with counsel and have your case heard before an administrative discharge board. Subsequently, your CO forwarded his recommendation to the separation authority that you be separated with an Other Than Honorable (OTH) conditions characterization. On 7 April 1986, a staff judge advocate's review of your case found the proceedings were sufficient in law and fact. On 11 April 1986, the separation authority directed you be discharged with an OTH by reason of POM. On 16 April 1986, you were so discharged.

The Board carefully reviewed your application and 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 and your contentions that, (1) you did not complete infantry training school before the company XO (Executive Officer) would not allow you to request mast in order to discuss you MOS (military occupational specialty) which was wrong, (2) your XO told you to refuse your order and you did, (3) for the past 13 years you have been employed by the Department of the Army with honor and dignity, (4) you have been promoted to several supervisory positions and have received the Commanders Coins for excellence five times, (5) you have served the United States for approximately 14 years, taking care of the Army, Navy, Air Force and Marines, (6) you were denied VA (Department of Veterans Affairs) benefits for Camp Lejeune water contamination based on your discharge characterization, and (7) you have cancer for which you are currently being treated. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters. However, the Board noted the congressional correspondence included with your application.

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 SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included two SCMs and over 100 days of UA during less than 12 months of active duty. Further, the Board considered the negative effect you had on the good order and discipline of your unit as evidenced by your CO's comments in his recommendation for administrative discharge. Additionally, the Board noted you provided no substantiating evidence to support your assertions regarding your XO. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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. While the Board commends your post-discharge good character, 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.

With regard to your contention concerning contaminated water at Camp Lejeune, please note that Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

8/9/2022

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Executive Director
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