



**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: 3956-22  
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 initial 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 reconsideration application on 8 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).

You enlisted in the Navy on Marine Corps and commenced active duty on 4 December 1989. Your enlistment physical on 14 February 1989 and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 10 September 1991, you received non-judicial punishment (NJP) for knowingly altering a military identification card, and for violating a lawful order by underage drinking. You did not appeal your NJP.

On 2 June 1992, you were convicted at a Summary Court-Martial (SCM) of conspiracy to commit an offense in order to avoid field exercises, unauthorized absence (UA) from your appointed place of duty, and dereliction in the performance of duties. As punishment you were

sentenced to confinement for thirty days, a reduction in rank to the lowest enlisted paygrade (E-1), and forfeitures of pay. On 10 June 1992, the Convening Authority approved the sentence as adjudged.

On 16 September 1992, you commenced a period of UA that terminated after twenty-eight days, on 14 October 1992, with your surrender to military authorities. Subsequently, you received NJP for your twenty-eight day UA. You did not appeal your NJP.

On 26 October 1992, your command issued you a "Page 11" counseling warning (Page 11) documenting your pattern of misconduct resulting in receiving two NJPs and an SCM. The Page 11 expressly warned you that a failure to take corrective action may result in judicial and/or administrative proceedings. You did not submit a Page 11 rebuttal statement.

On 16 November 1992, your command issued you a Page 11 counseling you on the USMC policy concerning financial support for dependents and your moral and financial obligations to provide adequate and continuous support to your spouse. You did not submit a Page 11 rebuttal statement.

On 17 December 1992, you were notified of administrative separation proceedings by reason of misconduct due to minor disciplinary infractions. You expressly waived your rights to consult with counsel, include written rebuttal statements, and to request an administrative separation board. In the interim, a Staff Judge Advocate determined your separation was legally and factually sufficient. Ultimately, on 3 February 1993 you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 23 November 2020, this Board denied your initial petition for relief. You contended that your discharge was unfair at the time, your discharge was procedurally defective, and your discharge was unfair now.

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 discharge was unfair at the time, (b) your discharge was procedurally defective, (c) your discharge was unfair now, (d) clemency was never shown, and (e) your OTH does not serve a further purpose. 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. First and foremost, that Board found that your counsel's proffered contentions were without merit and not persuasive. For example, the Board found no evidence that your discharge was procedurally defective or unfair. Further, 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 determined that characterization under OTH conditions is generally warranted for 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 Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.9 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct.

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 veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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, after reviewing the record holistically, the Board still concluded that, given the totality of the circumstances, 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,

7/15/2022

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