



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

█
Docket No: 4092-22
Ref: Signature Date



Dear Petitioner:

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 August 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 to the Kurta Memo and 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 29 October 2001. You reenlisted on 29 October 2005 and again on 18 August 2007. Your period of continuous Honorable service is documented in the Block 18 remarks for your record of discharge. On 18 March 2008, while serving in the grade of sergeant/E-5, you received nonjudicial punishment (NJP) for adultery with a private first class/E-2. The following year, you were counseled for misuse of government funds after spending your entire \$1300 travel advance prior to executing your travel and lying to your staff noncommissioned officer. You were counseled again, in June of 2009, for arriving late to work without properly notifying your chain of command. Finally, under a pre-trial agreement which removed pending charges from a Special Court-Martial (SPCM) to a Summary Court-Martial (SCM), provided that you waived your administrative separation board hearing, you plead guilty, on 18 September 2009, to violations of a false official

statement by stating that you had not used a government purchased ticket for personal travel during leave, for larceny of military property (specifically, the commercial airline ticket), for leaving the scene of an accident without identifying yourself, and for two specifications of failure to go to your appointed place of duty at the prescribed time. Upon notification of administrative separation proceedings, you waived your administrative hearing, and your commanding officer forwarded a recommendation for separation under Other Than Honorable (OTH) conditions. Your screening for post-traumatic stress disorder identified that you had no need for further mental health evaluation. Following approval of your separation for the basis of misconduct due to commission of a serious offense, you were discharged, on 4 December 2009, with an OTH and final proficiency and conduct marks of 4.6 and 4.7, respectively.

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 and your contentions that your misconduct was nearly a decade ago, you have learned from your actions, and you desire to pursue a career in law enforcement but cannot due to your discharge characterization. The Board noted that you did not submit any supplemental evidence for consideration of post-discharge character or clemency.

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 NJP and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and noted that you were afforded multiple opportunities to correct your behavior and, instead, committed a pattern of escalating offenses. 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. 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 is attached 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,

9/8/2022

[REDACTED]