



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

█  
Docket No: 4270-22  
Ref: Signature Date

█  
█  
█  
Dear █

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 15 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 Marine Corps and commenced active duty on 24 April 1987. Your pre-enlistment physical examination, on 24 April 1987, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On or about 6 February 1989 your command issued you a "Page 11" counseling warning (Page 11). The Page 11 documented your deficiencies in using poor judgment and poor leadership. The Page 11 expressly warned you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On or about 30 March 1989, your command issued you a Page 11 warning. The Page 11 documented your alcohol-related incident, specifically drunk and disorderly conduct. The Page 11 again expressly warned you that a failure to take corrective action may result in

administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On or about 27 August 1990, you submitted a voluntary written request for an administrative discharge under Other Than Honorable (OTH) conditions in lieu of trial by court-martial for the following offenses which could lead to a bad conduct discharge: disobedience of a lawful order by possessing alcohol in the barracks, resisting apprehension/arrest, and wrongfully communicating a threat to kill three Marines with a gun. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. While not specifically required for purposes of your request, you expressly admitted that you were guilty of two of the three charged offenses. In the text of your discharge request you expressly stated that your request was voluntarily submitted free from any duress or promises of any kind, you were satisfied with your counsel's advice, and you acknowledged that if your request was approved, a characterization of service of OTH was authorized.

As a result of this course of action, you were spared the stigma of a court-martial conviction for your misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. You also expressly acknowledged and understood that with an OTH discharge you would be deprived of virtually all rights as a veteran, and you may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge received may have a bearing. In the interim, on 20 September 1990, the command Staff Judge Advocate determined that your separation proceedings were legally and factually sufficient. Ultimately, your request was approved and, on or about 19 October 1990, you were separated from the Marine Corps with an OTH discharge and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

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) corrections should be made because you served your full time, and (b) you had less than four months to go before your discharge. 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 request for discharge in lieu of court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included communicating threats to kill other Marines. Further, the Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade or change in your reentry code. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your misconduct constituted a significant departure from the conduct

expected of a Marine and 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 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. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Thus, the Board concluded that you received the correct discharge characterization and reentry code based on your overall circumstances and that such characterization and reentry code were in accordance with all Department of the Navy directives and policy at the time of your discharge. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still determined that there was no 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 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,

22/2022

█

Executive Director

Signed by: █