



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: 4462-22
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 you did not file your application 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 23 September 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 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 15 July 1991. You were counseled in May of 1992 for unauthorized absence (UA) and failure to obey orders. You absented yourself without authority from 13 July 1992 until 26 May 1993, ultimately surrendering to military at the encouragement of your family. On 6 August 1993, you were convicted by Special Court-Martial (SPCM) for a violation of Article 86 (UA). You served without further incident until March of 1995 when you were counseled for refusing to surrender your identification card to a staff noncommissioned officer and, instead, fleeing. You then received nonjudicial punishment (NJP) for a violation of Article 108 due to willfully damaging your service rifle. After additional administrative counseling for UA and failure to comply with base driving regulations, you again absented yourself without authority from 3 May 1996 –

30 May 1996, for which you were convicted by Summary Court-Martial (SCM) for three specifications of UA. On 9 August 1996, you were notified of processing for administrative separation due to a pattern of misconduct. Following consultation with legal counsel, you elected to waive your right to a hearing before an administrative board. You elected to submit a statement in rebuttal to your separation in which you asserted your belief that you were being singled out and that at least one of your UAs was due to following orders. The recommendation for your administrative separation under Other Than Honorable (OTH) conditions was approved by Commander, ██████████, and you were discharged on 11 September 1996.

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 UA resulted from being denied leave to visit your terminally ill grandmother, the denial of your leave resulted from systemic racism on the part of your Company Gunnery Sergeant, your notification of administrative separation occurred during a period of emotional distress following your grandmother's passing, you were bullied into signing away your Marine Corps career rather than defending yourself at a formal hearing due to improper legal advice from a non-lawyer enlisted member with a clear conflict of interest (specifically, you assert that no one told you to appeal or ask for a lawyer), your overall quality of service was otherwise satisfactory as evidenced by character statements of Marines with whom you served, and that you merit an upgrade based on additional considerations of post-discharge character such as fixing your life after initially turning to the streets following your discharge, owning your own business, and actively providing for your nine children. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

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, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Additionally, with respect to your administrative separation processing, the Board noted that you indicated via your initials and hand-written selections that you consulted with legal counsel prior to electing to exercise or waive any rights. Further, the Board noted that you did not provide any evidence to substantiate your contentions of mistreatment or improper administrative separation processing. Finally, the Board observed that your record of counseling, NJP, SCM, and SPCM documented a clear and ongoing pattern of misconduct. 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. Although the Board favorably considered your claims of post-discharge 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.

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,

10/11/2022

