



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: 4724-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 October 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 U.S. Marine Corps Reserve and began a period of active duty on 30 December 1985. From 30 December 1985 to 29 May 1986, you completed a period of active service resulting in an Honorable discharge by reason of Completion of Required Active Service (USMCR) IADT. From 1 November 1986 through 22 October 1989, you were counseled numerous times for unsatisfactory performance in the Selected Marine Corps Reserve (SCMR) due to unauthorized absences. As a result, from 22 March 1987 through 16 July 1989 although eligible for promotion to PFC/E-2, you were not recommended for promotion. On 6 May 1989, you were counseled for malingering during rifle cleaning time and for your lack of attention to detail. On 7 May 1989, you received nonjudicial punishment (NJP) for failure to obey a lawful order. On this date, you received another counseling entry for failure to be in proper uniform during inspection and failure to wear appropriate rank insignia.

On 5 August 1989, your command initiated your administrative separation processing for unsatisfactory participation. You were notified via certified mail but failed to return your acknowledgement of rights. Therefore, you were presumed to have waived your rights. Subsequently, on 22 October 1989, your commanding officer recommended your discharge to the Separation Authority (SA) for unsatisfactory participation. On 9 June 1990, a staff judge advocate's review of your case found the proceedings to be sufficient in law and fact. On 12 June 1990, the SA directed you be discharged with an Other Than Honorable (OTH) characterization of service due to Failure to Participate (Reserve not on active duty). On 3 July 1990, 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 were a young married Marine whose marriage was failing apart, (2) you tried seeking help within your unit via your squad leader and warrant officer but none seemed to help you so you started missing training on the weekends but making them up during the week after work, (3) your wife left you and moved to █ with your daughter, (4) you chose to spend your weekend with your daughter vice attending drills as you felt there was no place to turn, (5) you eventually gained custody of your daughter, raised her, remarried, and had two sons who have been trained to take over your successful construction business, and (6) you feel if there was a better network to help young Marines at the time, your career could have been what you thought it would be. 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 NJP and multiple UAs from your drill requirements, 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. The Board also noted your commanding officer comments regarding your performance in which he stated, "[Petitioner] last attended a scheduled drill in May 1989 and has accumulated 15 UAs (unauthorized absences) to date. On his last drill weekend that [Petitioner] attended he received NJP for failure to obey a lawful order, (Article 92). Since joining this unit, [Petitioner's] performance has been marginal at best. [Petitioner] is a slow mover who fails to comprehend the simplest of instructions and has no big picture appreciation." Further, characterization of service is based in part on proficiency and conduct marks assigned on a periodic basis. Your proficiency average was 1.0 and your conduct average was 0.7. At the time of your service, a proficiency of 3.0 with a conduct average of 4.0 were required for a full honorable characterization of service. 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 accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, 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 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,

10/21/2022

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Executive Director

Signed by: █