



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

█  
Docket No. 5792-22  
Ref: Signature Date

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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 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 19 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active service on 26 March 1984. You were counseled on 18 October 1984 and notified of your several deficiencies related to coping with military service and motivation. You were further notified assistance was available and continued deficiencies may result in administrative separation proceedings. On 24 October 1984, you received non-judicial punishment (NJP) for failing to follow lawful orders. On 30 October 1984, you received your second NJP for willful disobedience of a lawful order from a superior commissioned officer and another orders violation. Subsequently, an informal inquiry was initiated and determined there was sufficient evidence to support the initiation of administrative separation proceedings. As a result of the foregoing, on 1 November 1984, administrative separation proceedings were initiated due to your misconduct by reason of pattern of misconduct, at which point, you waived your right to consult with counsel, and a hearing of your case before an administrative discharge board. On the same day, your commanding officer recommended your separation with an Other Than Honorable (OTH) character of service. You administrative separation proceedings were determined to be sufficient in law and fact. Subsequently, the separation authority approved and directed your separation. On 20 November 1984, you were discharged with an OTH character of service by reason of misconduct due to pattern of misconduct.

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 change discharge and contentions that you were experiencing numbness in your lower extremities, and was returned to duty despite continued feelings of numbness and you were doing your best but told would be stationed at another duty station. For purposes of clemency and equity consideration, the Board considered your desire to be buried with your father in a veterans' cemetery but noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board noted that your NJPs were approximately one week apart indicating that you, more likely than not, had no desire to follow the orders issued to you or to remain in the Marine Corps. 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 understands your desire to be buried with your father, 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 an upgraded characterization of service as a matter of clemency or equity. Ultimately, the Board concluded that the favorable matters you submitted for consideration were insufficient to outweigh the severity and nature of your misconduct. 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,

11/18/2022

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Deputy Director

Signed by: █