



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: 5825-22
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 2 November 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 entered active duty in the Marine Corps on 16 March 1994. During the period from 11 April 1995 to 8 August 1996, you received two non-judicial punishments (NJP) for two specifications of absence from appointed place of duty. On 5 December 1996, you received a warning counseling due to your lack of promptness at your appointed place of duty, general uniform appearance, and attitude. On 27 December 1996, a summary court-martial (SCM) convicted you of adultery. On 18 March 1998, you were released from active duty, transferred to the Inactive Ready Reserve (IRR), and received a General (Under Honorable Conditions) characterization of service. Your final conduct mark at discharge was 3.7.

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 contention that your discharge is incorrect because you received a Certificate of Discharge (DD Form 256) that states you received an Honorable discharge. For purposes of clemency and equity consideration, the Board 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 two NJPs and SCM, outweighed these mitigating factors. Further, the Board noted that upon your release from active duty, you were assigned a characterization of service warranted by your service record. Based on your assigned conduct average of 3.7 and the misconduct in your record, you did not qualify for an Honorable characterization of service. Marine Corps regulations require a minimum conduct trait average of 4.0 to qualify for a fully Honorable characterization of service. Therefore, the Board determined that you were appropriately awarded a General (Under Honorable Conditions) characterization of service. Finally, the Board noted that the DD Form 256 you received from the IRR was in error and cannot be used to change the characterization of service you received from active duty. Based on these factors, the Board concluded that the preponderance of the evidence supports a finding that the negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. 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. 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,

11/17/2022

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Executive Director

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