



**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: 6816-22  
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 30 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 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 10 September 2003. On 28 July 2004, you received non-judicial punishment (NJP) for unauthorized absence (UA). You were counseled on 8 June 2005 and 15 October 2005 due to your inappropriate racial comments, immaturity, and lack of MOS proficiency. You received NJP, on 18 November 2005, for your UA from your appointed place of duty, insubordinate conduct toward a NCO, and failure to obey order or regulation. You received your third NJP for larceny, on 3 February 2006, and you were counseled regarding your receipt this NJP. As a result, on 11 April 2006, you were notified of administrative separation processing for misconduct due to a pattern of misconduct. You waived your right to consult with counsel and to a hearing of your case before

an administrative discharge board (ADB). On the same day, your commanding officer recommended your separation from the Marine Corps with an Other Than Honorable (OTH) character of service. Subsequently, on 23 May 2006, the separation authority approved and directed your separation with an OTH characterization of service due to misconduct by reason of pattern of misconduct. On 7 June 2006, you were so discharged.

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 characterization of service due to a passage of time and your contention that you believe your assault offenses should have been adjudicated in civil court. 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 which resulted in three NJPs, outweighed these mitigating factors. In making this finding, the Board considered seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. The Board also concluded your conduct showed a complete disregard for military authority and regulations. 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. Finally, the Board noted you provided no evidence to support your contentions. 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. 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 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,

10/20/2022

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