



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: 6990-22

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 reconsideration application on 9 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 originally attempted to enlist in the U.S. Navy in 1983. However, on 30 September 1983, you were discharged from the Delayed Entry Program (DEP) for marijuana use while in the Navy DEP.

You subsequently enlisted in the Marine Corps on 4 March 1985. Your pre-enlistment physical examination, on 17 December 1984, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 16 August 1985, your command issued you a "Page 11" counseling warning (Page 11) documenting your poor attitude and lack of motivation. The Page 11 expressly warned you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 24 August 1985, you received non-judicial punishment (NJP) unauthorized absence (UA). You did not appeal your NJP. On the same day your command issued you a Page 11 documenting your NJP. The Page 11 expressly warned you that a failure to take corrective action, as evidenced by further violations of the UCMJ, may result in processing for administrative separation. You did not submit a Page 11 rebuttal statement.

On 26 February 1986, your command issued you a Page 11 documenting your frequent involvement with military authorities. The Page 11 expressly warned you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 28 February 1986, your command issued you a Page 11 documenting your deficiencies in financial irresponsibility by neglecting to keep a proper checking account balance. The Page 11 noted that you had forty-six (46) dishonored checks totaling approximately \$██████████. The Page 11 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 29 May 1986, you were convicted at a Special Court-Martial (SPCM) of making and uttering twenty-two worthless checks. You were sentenced to confinement for sixty days, and a reduction in rank to the lowest enlisted paygrade (E-1). On 15 August 1986, the Convening Authority approved the SPCM sentence.

On 5 November 1986, you received NJP for willfully disobeying a superior commissioned officer. You did not appeal your NJP. On the same day, your command issued you a Page 11 documenting you receiving two or more NJPs in your first enlistment. The Page 11 expressly warned you that any further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or in processing for administrative discharge. You did not submit a Page 11 rebuttal statement.

On 11 December 1986, you received NJP for assaulting a female E-4 Marine, and for misbehavior of a sentinel/lookout by sleeping at your post. You did not appeal your NJP.

On 5 January 1987, you were notified of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You waived your right to a hearing before an administrative separation board (Adsep Board). However, on 16 February 1987, the Separation Authority disapproved your separation and instead gave you another chance and reassigned you to a different command.

On 20 November 1987, you received NJP for UA. You did not appeal your NJP. On 4 January

1988, you were notified of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You elected your right to request a hearing before an Adsep Board.

On 18 February 1988, an Adsep Board convened in your case on board ██████████. At the Adsep Board, you were represented by a Marine Corps Judge Advocate. Following the presentation of evidence and witness testimony, the Adsep Board members determined that the misconduct allegations were supported by a preponderance of the evidence. Subsequent to the misconduct finding, the Adsep Board members recommended that you be separated from the Marine Corps with an under Other Than Honorable (OTH) conditions characterization of service. Ultimately, on 15 April 1988, you were separated from the Marine Corps for a pattern of misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you served the Marine Corps for more than three years, and (b) you were just months away from serving your four-year term. 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your pattern of serious misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered your statement regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that

