



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: 7436-22
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 26 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 entered active duty with the Marine Corps on 10 December 1984. On 13 February 1986, your commanding officer (CO) assigned you to the weight control program for six months. On 21 July 1986, your CO requested you receive a medical evaluation due to your failure to meet weight control standards within six months. On 6 August 1986, your medical evaluation determined your weight gain was not due to a pathological disorder and you were assigned to the remedial physical training program. During the period from 23 October 1986 to 29 October 1986, you received two warning counseling's on your failure to maintain funds in your checking account and to conform to the Marine Corps weight standards. On 2 February 1987, you received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status from 16 December 1986 to 13 January 1987 totaling 29 days. On 3 February 1987, your CO directed you to receive a second medical evaluation due to your overweight appearance. The evaluation determined you were overweight with a body fat percentage

of 20.5 percent and your weight gain was not due to a pathological disorder. Subsequently, you were notified of pending administrative separation action by reason of failure to conform to weight standards. After waiving your rights, your commanding officer forwarded your package to the separation authority (SA) recommending your discharge with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the CO's recommendation and, on 15 April 1987, you were so discharged for unsatisfactory performance due to failing to meet weight standards.

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 Frist Sargent gave you an ultimatum to receive a dishonorable discharge or accept a GEN discharge. 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 failure to conform to weight standards, outweighed these mitigating factors. In making this finding, the Board considered your failure to meet weight standards and the likely negative effect it had on the good order and discipline of your unit. Additionally, the Board noted you provided no evidence to substantiate your contention. The Board also noted that your notification of administrative discharge processing specifically states that you may receive a General (Under Honorable Conditions) characterization of service and you acknowledged receipt of the notification on 17 February 1987 after attested that you read and understood its contents. Therefore, the Board determined you were properly notified and administratively separated for weight control failure. When weighing your counselings, misconduct, and weight issues against your overall active duty service, the Board concluded the significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization of service. 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,

11/6/2022

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Executive Director
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