



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: 7764-22
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 28 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).

You enlisted in the Marine Corps and entered active duty on 7 December 1999. Your pre-enlistment physical examination, on 29 November 1999, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 31 January 2001, your command issued you a "Page 11" counseling warning (Page 11) noting your deficiencies for failing to obey a lawful order and regulation. The Page 11 expressly advised you that a failure to take corrective action will result in judicial and/or administrative separation proceedings. You elected not to make a Page 11 rebuttal statement.

On 22 June 2001, your command issued you a Page 11 noting your deficiencies again for failing to obey a lawful order and regulation. The Page 11 expressly advised you that a failure to take corrective action will result in judicial and/or administrative separation proceedings. You elected not to make a Page 11 rebuttal statement.

On 19 December 2001, your command issued you a Page 11 noting your deficiencies for failing to go to your appointed place of duty for a 782 gear inspection, and for poor conduct and a total disregard for the good order and discipline of your unit. The Page 11 expressly advised you that a failure to take corrective action will result in judicial and/or administrative separation proceedings. You elected not to make a Page 11 rebuttal statement.

On 22 March 2002, you received non-judicial punishment (NJP) for three separate specifications of failing to obey a lawful order or regulation. You did not appeal your NJP. On the same day, your command issued you a Page 11 noting your deficiencies of a lack of professionalism, poor conduct, poor judgment, improper conduct, and a total disregard for good order and discipline due to your immature and negative attitude. The Page 11 expressly advised you that a failure to take corrective action will result in judicial and/or administrative separation proceedings. You elected not to make a Page 11 rebuttal statement.

On 13 July 2002, you commenced a period of unauthorized absence (UA). On 12 August 2002, your command declared you to be a deserter. Unfortunately, there is no notation in your service record of when your UA terminated. On 25 August 2003, you commenced another UA. On 24 September 2003, your command declared you to be a deserter. Your UA terminated after approximately 422 days with your arrest by civilian authorities on or about 20 October 2004.

On 9 November 2004, you received NJP for your 422-day UA. You did not appeal your NJP. In a personal statement you provided on 4 November 2004, you stated: "I went in UA status because I did not like the unit I was in before hand. I did not like being a Marine. I do not wish to stay in the Marine Corps."

On 9 November 2004, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. You waived your rights in writing to consult with counsel and to request an administrative separation board. Ultimately, on 6 December 2004, you were separated from the Marine Corps for misconduct with an under Other Than Honorable (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. For purposes of clemency and equity 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. The Board noted that you did not proffer any contentions or arguments for the Board to consider in determining whether to grant any requested relief. The Board unequivocally did not believe that your record was otherwise so meritorious 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 during your military service. The simple fact remained is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status twice for no less than 422 days

without any legal justification or excuse. The Board concluded that, if anything, the Marine Corps granted you a rather generous break by not court-martialing instead for your long-term UA which almost certainly would have resulted in a BCD at a Special Court-Martial and confinement. The Board determined that your misconduct constituted a significant departure from the conduct expected of a Marine, and 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.6 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

The Board noted that there is no provision of federal law or in Department of the Navy directives or regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, 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 serious misconduct clearly merited your receipt of an OTH, and that such characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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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