



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: 7869-22
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 23 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).

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 entered active duty on 19 November 1984. Your pre-enlistment physical examination, on 29 June 1999, and self-reported medical history both noted no neurologic or psychiatric issues.

On 24 September 1985, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On 4 December 1985, you received NJP for insubordinate

conduct. You did not appeal your NJP. On 19 February 1986, you received NJP for UA. You did not appeal your NJP.

On 7 July 1986, you commenced a UA that terminated after two days on 9 July 1986. Your command issued you a "Page 11" counseling warning (Page 11) for a lack of initiative, self-discipline, and frequent involvement with military authorities. The Page 11 advised you that a failure to take corrective action may result in judicial proceedings and/or administrative separation. You did not elect to submit a Page 11 rebuttal statement.

On 25 August 1986, you received NJP for two separate UA specifications, and for the willful disobedience of a superior commissioned officer. You did not appeal your NJP. Your command issued you another Page 11 for a lack of initiative, self-discipline, and frequent involvement with military authorities. The Page 11 advised you that a failure to take corrective action may result in judicial proceedings and/or administrative separation. You did not elect to submit a Page 11 rebuttal statement.

On 19 September 1986, you received NJP for breaking restriction, insubordinate conduct, and communicating a threat. You did not appeal your NJP. On 23 October 1986, you received NJP for UA. You did not appeal your NJP.

On 10 November 1986, you commenced a UA that terminated after twenty-eight days on 8 December 1986. On 26 January 1987, you commenced another UA that terminated after seven days on 2 February 1987.

On 4 March 1987, you were convicted at a Special Court-Martial (SPCM) of two separate UA specifications (28 days and 7 days, respectively). However, the 7-day UA was reduced to just three days in duration. You were also convicted of twelve separate minor UA specifications of failing to go to your appointed place of duty. You were sentenced to confinement for fifty days, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 8 June 1987, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of the appellate review in your case, on 13 July 1987, you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

On 13 November 1997, this Board denied your initial petition for relief.

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 changed to your narrative reason for separation, separation code, separation authority, and reentry code. In addition, the Board considered your contentions that: (a) the BCD characterization is erroneous under current case law and not authorized for UA periods lasting less than thirty days, (b) clemency is in order, (c) you were eligible to receive a disability-related separation based on an ankle injury, and (d) the BCD is unjust when considering the misconduct, totality of service, and mitigating factors. For purposes of clemency and equity consideration, the Board considered the

materials you submitted in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, any argument that you were not eligible to receive a BCD at your SPCM based on the UA offenses you committed was determined to be without merit. The Board noted that back in 1987 (and still today), the maximum permitted punishment for either of your two multi-day UA offenses did not include a BCD. However, the Board noted that Rules for Court-Martial 1003(d)(3) expressly permitted a BCD when considering your offenses. RCM 1003(d)(3) stated:

If an accused is found guilty of two or more offenses for none of which a dishonorable or bad-conduct discharge is otherwise authorized, the fact that the authorized confinement for these offenses totals six (6) months or more shall, in addition, authorize a bad-conduct discharge and forfeiture of all pay and allowances.

The maximum authorized confinement for your 28-day and 3-day UA offenses was six months and one month, respectively. Accordingly, even before accounting for the twelve “fail to go” UA SPCM specifications (one month of confinement for each such UA), you clearly exceeded the required six-month confinement threshold under RCM 1003(d)(3) to render you BCD eligible.

Second, the Board noted that discharge processing for misconduct, whether done administratively or as a result of a court-martial, takes absolute precedence over the physical evaluation board (PEB) process. Further, the Board unequivocally did not believe that your record was otherwise so meritorious to deserve an 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 also determined that your cumulative 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 demonstrated 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.

Third, 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 in conduct was 3.77. 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 pattern of serious misconduct.

