



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. 8041-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 January 2023. 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, 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 Navy and began a period of active duty on 7 July 1983. On 4 August 1987, you were honorably discharge from service by reason of expiration of obligated service.

You subsequently enlisted in the Marine Corps and began a period of active duty on 2 February 1988. On 19 January 1989 and 23 March 1989, you were counseled for the following deficiencies: loss of government property, disrespect towards a noncommissioned officer, routine lateness, lackadaisical attitude, substandard performance, returning late from liberty, and continuous poor performance. You were advised that failure to take corrective action could result in administrative separation. On 16 April 1989, you were apprehended by civil authorities after a domestic violence incident. On 28 April 1989, you received nonjudicial punishment (NJP) for driving with a suspended license while on base. On 26 May 1989, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. Subsequently, your

commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 15 June 1989, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the separation authority approved the recommendation and ordered you discharged with an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 22 June 1989, 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 for a discharge upgrade and contentions that you served honorably for four years, were going through family problems with your wife, and have become a hard working citizen. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJP, civilian misconduct, and counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, 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. 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. While the Board commends your post-discharge accomplishments and good character, 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 granting you the relief you requested or granting relief 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 the 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,

2/6/2023

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Executive Director
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