



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: 8534-22
Ref: Signature Date



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 30 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 enlisted in the Marine Corps and began a period of active service on 16 July 2002. On 12 September 2003, you pled guilty in civil court to shoplifting for items valued at \$202, and you were counseled regarding your civil misconduct. On 2 October 2003, you received non-judicial punishment (NJP) for unauthorized absence (UA). A portion of your punishment was suspended for a period of 6 months. On the same day, you were counseled regarding your misconduct, and notified further deficiencies may result in the initiation of administrative separation proceedings. On 30 October 2003, the previously suspended punishment was vacated due to your continued misconduct. On 28 April 2004, you received NJP for UA and consumption of alcohol under the age of 21. Again, a portion of your punishment was suspended for a period of 6 months.

You attended and successfully completed all requirements for outpatient treatment for substance abuse on 4 April 2005. At this time, you were counseled regarding your underage drinking and

notified further misconduct would result in the initiation of administrative separation proceedings.

On 26 September 2005, you were charged by civil authorities for DUI with a BAC of .132, and an open container. The following day you were counseled regarding your alcohol related misconduct and notified further deficiencies may result of the initiation of administrative separation proceedings. You were diagnosed with alcohol abuse and again completed outpatient substance abuse treatment.

On 19 October 2005, you received NJP for UA. Even though your punishment was initially suspended, on 28 November 2005, this suspension was vacated due to your continued misconduct. On 28 December 2005, you received another NJP for UA. On the same day, you were notified of your non-recommendation for promotion due to your NJP.

On 16 March 2006, administrative separation proceedings were initiated due to your misconduct by reason of pattern of misconduct, at which point, you elected your right to consult with counsel, and waived your right to a hearing of your case before an administrative discharge board (ADB). Your commanding officer recommended your separation with an Other Than Honorable (OTH) character of service. Subsequently, you received supplemental notification with the addition of administrative separation proceedings by reason of misconduct due to civil conviction. The separation authority approved the recommendation and directed your separation based on a pattern of misconduct. On 24 May 2006, you were discharged with an OTH characterization of service.

You previously applied to the Naval Discharge Review Board (NDRB) with request to upgrade your discharge. The NDRB denied your request to upgrade your character of service, on 20 March 2008, after concluding your discharge was proper as issued.

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 character of service and contentions that you completed five years of service and your DUI did not warrant an OTH. 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 NJPs and civil convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your unit and the discrediting nature of your civil convictions. Contrary to your implied contention that you were only discharged for your DUI, the Board determined you were discharged based on your multiple NJPs, in addition to your civil convictions that included the DUI, shoplifting, and having an open container. Finally, while the Board noted that you completed three years and 10 months of active duty service, it also considered that your conduct during this period did not

meet the minimum standards required of a Marine. 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. 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,

12/30/2022

