



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

■  
Docket No. 8950-22  
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 22 February 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, 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 began a period of active duty on 28 August 1996. On 5 October 1997, you received non-judicial punishment (NJP) for failure to obey a lawful order. Additionally, you were issued administrative remarks (Page 11) counseling concerning deficiencies in your performance and conduct: specifically, your lack of military bearing and failure to render proper respect to a noncommissioned officer. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation from the naval service. On 4 November 1997, you were

issued a Page 11 counseling concerning deficiencies in your performance: specifically, your failure to follow liberty policies while in ■■■■■.

On 26 November 1997, you received a second NJP for unauthorized absence (UA), disobeying a lawful order, five specifications of larceny, and drunk and disorderly conduct. On 13 January 1998, you received a third NJP for false official statement and larceny. On 20 March 1998, you were again issued a Page 11 counseling concerning deficiencies in performance and conduct: specifically, your failure to comply with the Uniform Code of Military Justice (UCMJ) and your frequent involvement with military authority. You were advised that any further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or processing for administrative discharge.

On 15 April 1998, you received a fourth NJP for absence from your appointed place of duty. As a result, on 6 May 1998, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Prior to the commanding officer's recommendation, on 20 May 1998, you received your fifth NJP for UA. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge, and directed your OTH discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. On 12 June 1998, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 change your discharge character of service and contentions that you were being harassed because of your race, you were never was in trouble before the military, you are an asset to your community today, the Marine Corps was your life, and you received a good conduct medal. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, The Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided multiple opportunities to correct your deficiencies during your service, however, you continued to commit additional misconduct.

Finally, the Board noted that you provided no evidence to substantiate your contention of mistreatment. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

3/7/2023

█  
Executive Director  
█