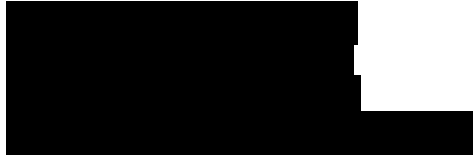




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 8992-22

Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 31 March 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 8 August 1988. From May through December of 1989, you were administratively counseled on multiple occasions for substandard performance or conduct, to include: being disrespectful to a noncommissioned officer in the field, failure to take proper care of government property, unsatisfactory personal appearance, and three occasions of being eligible for promotion to Lance Corporal / E-3 but not recommended because of poor performance and because of lack of leadership. You were warned that failure to take corrective action could result in further administrative action to include non-judicial punishment (NJP) or administrative separation.

Your individual deployment record reflects deployment aboard the ██████████ from 23 August 1989 to 11 September 1989 and 12 October 1989 to 10 April 1990. Of note, the ██████████ participation in Operations ██████████ and ██████████ spanned from August of 1990 until January of 1991.

On 21 December 1989, you were issued a letter advising you of reduction in grade. On the same day, you received NJP for violations of the Uniform Code of Military Justice (UCMJ) under Article 78, for failure to provide assistance to an injured Marine, and Article 91, for willfully disobeying an order from a staff sergeant.

On 23 January 1990, you were issued another administrative counseling, which you refused to sign, advising you of frequent involvement with military authorities. You were again counseled that you were eligible for promotion but not recommended, in May of 1990 due to “awaiting” administrative separation, in June due to not having demonstrative a positive attitude or desire to excel in your performance as a Marine, and in July due to being in an unauthorized absence (UA) status, which lasted from 18 June 1990 until 15 July 1990. Following return from your UA, you received a second NJP for your violation of Article 86 due to your UA period.

From August through December 1990, you were administratively counseled for your continued non-recommendation for promotion due to your recent NJP. On 7 June 1991, you were again administratively counseled for frequent disciplinary infractions and cautioned that failure to correct your conduct deficiencies might result in administrative separation. However, you then received a third NJP on 1 July 1991 for a violations of Article 134, for willfully altering a light duty chit, and Article 107, for attempting to pass the altered document as the truth with the intent to deceive, after which your command requested legal service assistance with administrative separation.

On 15 August 1991, you were notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct and waived your right to a hearing before an administrative board. Your commanding officer recommended that you be separated under Other Than Honorable (OTH) conditions, which was approved by the Commanding General, 2d Marine Division. You were discharged, on 5 September 1991, with average proficiency and conduct marks below the 4.0 minimum for an “Honorable” characterization of service.

You previously applied to the Navy Discharge Review Board (NDRB), which considered your request on 7 February 2000. At that time, you contended that your service as a combat veteran of Operation ██████████ merited consideration for an honorable discharge and also asserted that you had received a Good Conduct Medal per a notation on your Certificate of Discharge or Release from Active Duty (DD Form 214), which you felt contradicted the misconduct basis in the narrative reason for your separation. With respect to the block 18 Remarks in your DD Form 214, the Board notes that, unlike the decorations, medals, badges, citations and campaign ribbons identified in block 13 of the same, the annotation “Good conduct Medal Period commences” does not reflect that you were issued such award. Rather, it identifies the last date that misconduct occurred and the resetting of the start date of the next good conduct period.

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 discharge to “Honorable” and change your narrative reason for separation to “Secretarial Authority,” and your contentions that you served honorably for over 3 years with a “single act” of indiscretion and your belief that you were otherwise an “outstanding member and valuable asset” of the Marine Corps with unlimited potential. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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, 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. In this regard, however, the Board observed that your record reflects three distinct instances of NJP for multiple infractions, not simply a single act or incident. Additionally, multiple administrative counseling entries document performance and conduct issues distinct from the misconduct of your three NJPs.

You assert mitigating factors with respect to your UA period in that you claim your dependent child, still an infant, was coughing up blood, leaving you and the mother struggling with medical care and health insurance coverage. You state that you coordinated with the American Red Cross to contact your command regarding the medical urgency of the situation but that you were denied leave without an explanation. You also claim that your staff sergeant directed you to remain absent until after the change of command and, thus, did not call you to return until approximately 30 days after your absence began. Finally, with respect to this incident, you contend that you returned to your command with evidence of medical bills in excess of \$35,000 but to not having been able to obtain health insurance coverage for your dependents for over 2 years. However, the Board noted that you did not submit any documentation substantiating the factual basis of these contentions.

Regarding the final incident that precipitated your administrative separation, you assert that you were injured while deployed in support of ██████████ but deny that you altered your medical chit. Rather, you state that your initial medical order to return to duty did not specify the level of duty or restrictions and, when you requested medical to complete the form, they used a different color of ink than initially used to fill it out. However, the Board observed that, when notified of your rights regarding NJP, which included the right to refuse NJP and demand trial by court-martial to contest the allegations against you, you waived those rights and elected to accept NJP, at which you were found guilty of the alleged offense.

Finally, you contend that you understand your conduct was a “violation of Marine Corps zero-tolerance policy” but that you have lived with the consequences of your mistakes, received full punishment after having been discharged under OTH conditions over 31 years ago, that you believe your misconduct did not rise to a level which should prevent you from obtaining an “Honorable” characterization of service, and that your post-discharge conduct has demonstrated your character and rehabilitation in your ability to overcome and move forward. With respect to your contentions regarding zero-tolerance policy, the Board found no evidence of drug use or abuse to which such a contention might apply and interpreted the reference to such policy as erroneous. Regarding your contentions of post-discharge character, the Board favorably considered the education, certifications, and employment history documented in your resume as well as your contention that you are proud of your service and devoted to your family. However,

the Board noted that you did not submit any supplemental evidence or documentation of your post-discharge character beyond your personal statement, resume, and photographs. As a result, the Board concluded 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 granting you the relief you requested or granting relief 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 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 is attached 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,

4/18/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]