



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

Docket No. 9057-22

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 13 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 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 U.S. Marine Corps and commenced a period of active duty on 10 November 1977. After completing a period of honorable service on 20 November 1980, you immediately reenlisted and commenced a second period of active duty.

On 20 February 1981, you were relieved of your duties as a military working dog handler due to your association with persons believed to be involved in the usage of marijuana. In May 1981, you were counseled by the Provost Marshall concerning your driving habits in patrol vehicles.

On 8 October 1981, you were counseled for your poor judgment. On 11 May 1982, you were counseled and assigned to the weight control/military appearance program.

On 9 July 1982, you received your first nonjudicial punishment (NJP) for going from your appointed place of duty and violating a lawful general order. On 2 September 1982, you were counseled regarding your unsatisfactory performance on the weight control program, at which time you chose not to make a statement. On 29 September 1982, you received a second NJP for a period of unauthorized absence (UA).

On 30 September 1982, you were notified of your pending administrative separation by reason of unsuitability as a result of your failure to conform with weight standards, at which time you waived your right to consult with military counsel and have your case heard before an administrative discharge board (ADB). On 19 October 1982, your commanding officer (CO) recommended you receive a General (Under Honorable Conditions) (GEN) discharge characterization of service. On 15 November 1982, the separation authority approved the recommendation and directed you be discharged with a GEN characterization due to unsuitability. On 23 November 1982, 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 to upgrade your characterization of service and your contentions that: (1) you were wrongfully convicted of being UA from a Marine who was subsequently relieved from duty and discharged and (2) you reported numerous crimes committed by the military police you worked with, including the Marine who wrongfully accused you of being UA. For purposes of clemency and equity consideration, the Board noted you did not provide 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 documented weight control failures and misconduct, as evidenced by your counselings and 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. Further, the Board noted you provided no evidence to substantiate your contentions. Finally, the Board found no evidence to support a finding that your discharge for unsuitability due to weight control failure was erroneous or unjust. As a result, the Board concluded significant negative aspects of your service outweighs the positive aspects and continues to warrant a GEN 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 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,

4/3/2023

