



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

█
Docket No. 9536-22

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 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, 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 January 1990. On 4 September 1990, you began a period of unauthorized absence (UA) which lasted 19 hours, 7 minutes, and resulted in nonjudicial punishment (NJP) on 17 September 1990. On 26 November 1990, you began a second period of UA which lasted one-day and resulted in your second NJP on 5 December 1990. On 18 December 1991, you received a third NJP for failure to obey a lawful order and a period of UA from appointed place of duty.

As a result, on 21 April 1992, your commanding officer (CO) recommended that you be administratively separated from the Marine Corps with a General (Under Honorable Conditions) discharge characterization of service by reason of misconduct due to minor disciplinary infractions. Subsequently, on 28 April 1992, you were counseled for cheating on a Company PFT and making a false statement to a senior noncommissioned officer. You were recommended for administrative separation due to your continuous UCMJ violations and disregard for military rules. On 12 May 1992, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to minor disciplinary infractions, at which point, you decided to waive your procedural rights. On the same date, your CO again recommended a General (Under Honorable Conditions) discharge characterization by reason of misconduct due to minor disciplinary infractions. On 20 May 1992, your administrative separation proceedings were determined to be sufficient in law and fact. On 28 May 1992, the separation authority approved the recommendation and ordered a General (Under Honorable Conditions) discharge characterization by reason of misconduct due to minor disciplinary infractions. On 5 June 1992, 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: (a) you were given the option to be released without repercussions after the conclusion of Operation Desert Shield/Desert Storm, and (b) you are working with NYS and would like to receive service credit for your military service. 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, 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, contrary to your contention, the Board noted that you were discharged involuntary and not any option to remain in the Marine Corps. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded significant negative aspects of your service outweighs the positive aspects and continues to warrant a General (Under Honorable Conditions) 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, _____

4/6/2023

█

Executive Director

█