



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

■
Docket No. 275-23
Ref: Signature Date

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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 10 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 to 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 23 January 1989. From 26 October 1989 until 28 November 1989, you were in an unauthorized absence (UA) status due to failure to report by the date ordered. There is no record that you were punished for this UA. On 17 April 1990, you were counseled for writing checks with insufficient funds. You received your first nonjudicial punishment (NJP), on 30 April 1989, for a violation of Article 86 due to UA from your appointed place of duty. The following month, you were administrative counseled for professional deficiencies and having extraordinarily poor judgment in your failure to follow written orders; you were advised to work on your decisiveness and to clearly think through your actions and the consequences of your actions. In November 1990, you accepted a second NJP for another violation of Article 86 due to being UA from formation, which a concurrent counseling entry indicated was merely a "footnote" in your disciplinary history. Your

third NJP the following month, on 18 December 1990, was again for two additional violations of Article 86 for UA from your appointed place of duty.

Subsequently, on 23 January 1991, you were notified of administrative separation proceedings for misconduct due to minor disciplinary infractions. You elected to waive your rights to consultation with counsel and a hearing before an administrative separation board, and you elected not to submit a statement for consideration with your discharge. Prior to your separation, you were screened for alcohol use, diagnosed with alcohol dependency, and recommended for level III in-patient rehabilitation. Your separation under Other Than Honorable (OTH) conditions was approved following legal review, and you were discharged on 6 March 1991.

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 and your contentions that your records are wrong – in that you claim you were on orders to work at the Defense Supply Center, ██████████, due to a Red Cross message regarding your spouse, at the time you were declared a deserter – and that your punishment was too severe for the incident. You also contend that your post-discharge character merits consideration of clemency, in that you have maintained gainful employment in the recovery and recycling of air conditioning refrigerant and have fostered 75 children since your discharge, to include adopting three whom you raised to successfully complete high school. For purposes of clemency and equity consideration, the Board noted you submitted evidence of your employment and training certifications and your state certification to act as a foster family.

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. Further, regarding your post-discharge clemency evidence, the Board noted that none of your documentation is dated within the past 20 years, nor have you submitted any supporting character statements either from social workers with whom you coordinated as a foster parent, the children you fostered, or even the children you purport to have adopted. In addition, the Board found your contention of potential error or confusion regarding your status during your purported absence due to a Red Cross message unpersuasive, observing that you provided minimal context and did not even clarify the date of that particular absence in light of the numerous total periods of UA documented in your service record. 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, _____

2/28/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]