



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

██████████
Docket No. 577-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

A three-member panel of the Board, sitting in executive session, considered your application on 1 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).

You enlisted in the U.S. Marine Corps Reserve and began a period of active duty for training on 25 October 2021. During a training evolution, on 7 February 2022, the Combat Instructor ordered you to train and you refused. You were issued a counseling warning regarding your insubordinate conduct and you did not elect to make a statement. On 8 February 2022, the Company Commander ordered you to train and you again refused. As a result, you received non-judicial punishment (NJP), on 17 February 2022, for willfully disobey a lawful order from a superior officer and willfully disobey a lawful order of a noncommissioned officer. Subsequently, you were notified of administrative separation processing for pattern of misconduct and commission of a serious offense. Your Commanding Officer (CO) recommended to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged with an OTH for pattern of misconduct. You were so discharged on 15 April 2022 and assigned an RE-4 reentry code.

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 an upgrade in your reentry code and contentions that your reentry code is unjust and you were discriminated against after you requesting medical attention. For purposes of clemency and equity consideration, the Board noted you provided your Department of Veterans Affairs claim but no 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. The Board further determined that willfully failing to obey orders of those appointed over you is detrimental to good order and discipline. Based on your conduct, the Board found that you were not suitable for further military service. Finally, the Board noted you provided no evidence to substantiate your allegations of discrimination. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a RE-4 reentry code. 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 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,

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Executive Director

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