



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

██████████  
Docket No. 1415-23  
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.

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 17 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).

You enlisted in the Marine Corps and began a period of active service on 9 September 1997. On 18 May 1999, you received non-judicial punishment (NJP) for drunken operation of a motor vehicle. Subsequently, on 27 September 2000, you were in a motor vehicle incident with other Marines, which resulted special court-martial charges for conspiracy to wrongfully appropriate a HMMWV, "aid and abet" another Marine by not discouraging him to drive HMMWV, wrongfully appropriate a HMMWV, leave an accident without producing ID, and drunk and disorderly. You eventually entered into a pretrial agreement (PTA) to plead guilty to certain charges at a summary court martial (SCM). As a result, on 13 December 2000, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. The following day, you waived your right to consult with counsel, and a hearing of your case before an administrative discharge board (ADB). Your commanding officer recommended your separation from the Marine Corps with an Other Than Honorable (OTH) character of service due to your commission of a serious offense. Ultimately,

on 14 February 2000, you were discharged with an OTH character of service by reason of misconduct due to the commission of a serious offense.

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. You contend that you had 3 1/2 years of honorable service, and although you made mistakes during your service, it should not prevent you from receiving veterans benefits. 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 misconduct, as evidenced by your NJP and SCM, 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. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. Regardless, the Board found, contrary to your contention, that your record of misconduct was sufficiently serious to support your OTH characterization. Finally, the Board considered that you already received a large measure of clemency from the Marine Corps when they accepted your PTA and tried you at a SCM. 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. 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,

4/4/2023

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Executive Director  
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