



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

█  
Docket No. 2199-23

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 27 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).

You enlisted in the Marine Corps and began a period of active duty on 7 April 1998. On 19 February 2002, you were counseled for using extremely poor judgement. You were advised that failure to take corrective action could result in administrative separation. On 6 May 2002, a command investigation concerning misuse of government computer systems indicated that you sent over nine emails containing pornographic and obscene images. On 31 May 2002, you received nonjudicial punishment (NJP) for disobeying a lawful order and wrongfully using government communications systems for other than official purposes. On 26 August 2003, you received a second NJP for wrongful appropriation due to multiple incidents of using fake coupons to obtain AAFES property at a lower cost.

On 29 August 2003, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you requested an Administrative Discharge Board (ADB) hearing. On 15 October 2003, the ADB voted (3) to (0)

that you committed misconduct and recommended that you were administratively separated from the Marine Corps with a General (Under Honorable Conditions) discharge characterization. On 25 November 2003, your CO concurred with the ADB recommendation. On 18 December 2003, your administrative separation proceedings were determined to be sufficient in law and fact. On 22 Dec 2003, the separation authority approved the ADB recommendation and ordered you discharged with a General (Under Honorable Conditions) discharge characterization by reason of misconduct due to pattern of misconduct. On 20 January 2004, you were so discharged.

Post-discharge, you entered the Army National Guard (ANG) with an enlistment waiver. Based on documentation you provided, you honorably served in the ANG and earned eligibility to retire at age 60 after completing 20 qualifying years of service. You also applied to the Naval Discharge Review Board (NDRB) to upgrade your characterization of service. The NDRB denied your request, on 17 March 2011, after determining your discharge was proper as issued.

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) your discharge characterization should be based on the 20 years of total military time served between the Marine Corps and the ANG; (b) you deployed multiple times and were given many recognitions for exemplary service; (c) you retired into inactive Army Reserves after 20 years in the rank of Captain. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 and counselings, 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, 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. In your case, however, the Board considered that you were involved in multiple incidents of misconduct and were given an opportunity to continue serving after your first incident of misconduct, but continued to commit additional misconduct. Finally, the Board noted your post-service accomplishments with the ANG but was not persuaded by your arguments that your characterization of service with the Marine Corps should include your service with the ANG. While the Board appreciates your service to this country, the Board was also cognizant of the fact you were given an unusual second chance after your poor Marine Corps service and, in the Board's opinion, this amounted to a large measure of clemency already received. Ultimately, the Board determined you were fortunate to receive a General (Under Honorable Conditions) and, in assigning you this characterization of service, the Marine Corps already took into consideration all the positive aspects of your service, to include your almost six years of service. As a result, the Board concluded significant negative aspects of your Marine Corps service outweighed 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,

4/18/2023

