



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

█  
Docket No. 2891-23  
Ref: Signature Date



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 26 April 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 and began a period of active duty on 9 July 1996. On 15 April 1997, you received non-judicial punishment (NJP) for failure to go to appointed place of duty, failure to obey a lawful order. Then on 4 September 1997, your suspended punishment was vacated from your 15 April 1997 NJP. You were then issued a counseling warning regarding your performance and conduct and any further continuation of deficient performance may result in disciplinary action and or processing for administrative discharge. You received your second NJP, on 18 September 1997, for failure to go to color detail on four occasions, failure to go to field day, failure to obey an order, and willfully disobey a lawful written order. Subsequently, on 7 May 1998, you were found guilty at summary court-martial (SCM) for disrespectful language towards a sergeant and neglectfully losing issued gear in excess of \$100.00. You were awarded confinement. As a result, you were notified of administrative separation processing for pattern of misconduct. After you waived your rights, the Commanding Officer (CO) made his recommendation 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. You were so discharged on 19 June 1998.

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 your discharge was unjust, you reacted negatively towards your Sergeant after being made to wait five hours in the company office and being accused of malingering, and you believe the correction should be made because you were injured, on medical leave, and falsely accused of faking an injury. 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 two NJPs and SCM conviction, 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, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, the Board noted you provided no evidence to substantiate your contentions regarding your Sergeant. Regardless, the Board noted that, in addition to that incident, you were involved in at least eight other documented instances of misconduct. 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,

5/3/2023

