



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

Docket No. 3313-23

Ref: Signature Date

Dear [REDACTED]

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 1 May 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 entered active duty on 20 July 1978. On 21 February 1986, you immediately reenlisted and continued with your active duty. In June 1989, you were selected to the paygrade of E-7/Gunnery Sergeant.

On 1 August 1989, you were counseled for: (a) conduct unbecoming a senior non-commissioned officer (SNCO), (b) substandard performance, (c) lack of leadership by operating a motorcycle without helmet, (d) having an arrest warrant for failure to appear at traffic court, (e) being late for duty on several occasions, and (f) substandard personal appearance. You were also advised that any further deficiencies or impairment may result in administrative separation or judicial proceedings. On 22 November 1989, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA).

On 26 January 1990, you requested to be separated with an Other Than Honorable (OTH) characterization of service in lieu of trial by court martial (SILT) for wrongful use of amphetamine/ methamphetamine. On 26 February 1990, a staff judge advocate's review of your

case found it was sufficient in law and fact. On 28 February 1990, the separation authority approved your request to be discharged with an OTH characterization in lieu of facing a trial by court-martial. On 30 March 1990, you were so discharged.

On 14 May 1990, you were deleted from the E-7/Gunnery Sergeant selection list.

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: (1) you do not believe you would have received a fair and unbiased trial therefore you requested to be discharged, and (2) your belief that your service was not dishonorable since you were selected for E-7 Gunnery Sergeant. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After a thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Furthermore, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Additionally, 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, the Board determined your drug abuse and NJP was sufficiently serious to support your assigned characterization of service. Finally, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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 upgrading your characterization of service 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 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, \_\_\_\_\_

5/10/2023

[REDACTED] \_\_\_\_\_

Executive Director

Signed by: [REDACTED]