



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

█  
Docket No. 3757-23  
2651-22  
3035-18  
4246-03  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your currently request has been carefully examined by a three-member panel of the Board, sitting in executive session on 15 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You previously applied to this Board for a discharge upgrade and were denied on 17 September 2003, 25 June 2018, and 29 April 2022.

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 to a medical discharge

and your contentions that: (1) your chain of command provoked and harassed you daily and, when you reacted, you were given NJP, (2) there was no discussion of a separation until you went on liberty, met a woman, and had a one-night stand with her only to later discover she was the wife of a Sergeant, (3) instead of medically or administratively discharging you seven months earlier the Marine Corps purposely withheld your discharge to justify your NJPs and Other Than Honorable (OTH) discharge, and (4) there was no justice given to you in your administrative discharge hearing, just “selective punitive reaction, and action to a situation out of your control.” For purposes of clemency and equity consideration, the Board noted you provided evidence of post-service employment.

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 eight NJPs, 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 considered the likely negative effect your conduct had on the good order and discipline of your command. The Board was not persuaded by your arguments that you were treated unfairly and noted that you had a history of misconduct that commenced approximately six months after entering active duty and continued over your entire period of service. Further, the Board was also not persuaded by your argument that you were unjustly retained on active duty after a Physical Evaluation Board (PEB) finding of unfitness. The PEB proceedings occurred on 23 March 1984 and your record shows that you continued committing misconduct while your case was being processed. Since administrative separation processing for misconduct that results in an OTH characterization supersedes disability processing, the Board found no error or injustice with your misconduct based 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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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



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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,

6/1/2023

