



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

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Docket No. 4332-23
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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 23 October 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 this 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 United States Marine Corps and commenced a period of active duty on 3 January 1990. On 9 January 1992, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for disrespect by speaking in a derogative and sarcastic manner. On 3 March 1992, you were counseled regarding your lack of maturity, respect, tact, and professionalism. Corrective actions were explained, sources of assistance were provided, and disciplinary warnings were issued. On 24 March 1992, you received your second NJP for violation of Article 91, for disrespect by saying "shut up." On 9 October 1992, you were counseled regarding the issuance of bad checks and financial obligations. On 2 January 1993, you received your third NJP for violating Article 86, for unauthorized absence (UA) from your appointed place of duty from 0700 to 0850. You did not appeal any of the NJPs.

From 9 December 1992 to 3 February 1993, you participated in Operation Restore Hope, █. From 7 February 1993 to 13 March 1993, you participated in Operation Cease Fire while embarked aboard █

On 4 June 1993, you were counseled regarding your financial irresponsibility by writing worthless checks, and again, corrective actions were explained, sources of assistance were provided, and disciplinary warnings were issued. On 24 June 1993, you received your fourth NJP for violating Article 123a, for writing checks without sufficient funds. You did not appeal this NJP.

On 12 July 1993, you were notified that you were being processed for an administrative discharge by reason of misconduct due to minor disciplinary infractions and misconduct due to a pattern of misconduct as evidenced by three counseling violation and four NJPs. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation (ADSEP) board. Prior to your separation, on 19 August 1993, you received your fifth NJP for violating UCMJ Article 92, for violate restriction by being in unauthorized area as indicated by Armed Forces traffic ticket. You did not appeal this NJP. Ultimately, on 27 September 1993, you were discharged from the Marine Corps due to minor disciplinary infractions with an Other than Honorable (OTH) characterization of service and assigned a RE- 4 reentry code.

You previously submitted an application to the Naval Discharge Review Board and were denied relief on 27 May 1997. You also petitioned this Board and were denied relief on 13 June 2000.

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; (1) your desire to upgrade your discharge characterization, (2) your youth at the time of your misconduct, and (3) the harsh stigma of an OTH discharge. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and a summary of your post-service accomplishments.

After 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 NJPs and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the frequency of your misconduct and the fact that you were repeatedly provided opportunities to correct your behavior. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such repeated misconduct is contrary to Marine Corps values and policy, and places an unnecessary burden on fellow Marines. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade.

Therefore, 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 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,

10/28/2023

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