

DEPARTMENT OF THE NAVY

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

> Docket No. 4542-23 Ref: Signature Date



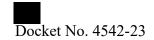
Dear Petitioner:

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 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 18 September 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 4 March 1991. On 27 October 1992, you were found guilty at Non-judicial Punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 111, for operating a passenger car while intoxicated. On 16 February 1993, you received your second NJP for violating UCMJ Article 92, for failure to obey an order by breaking curfew. On 7 June 1993, you received your third NJP for violating UCMJ Article 92, for failure to obey an order by wearing an earring. You did not appeal these NJPs.

On 10 August 1993, you received your fourth NJP for violating UCMJ Article 92, for failure to obey an order by purchasing tax-exempt alcohol from more than one establishment in an effort to avoid filling out over-purchase receipt (a.k.a. circumvention). You did not appeal this NJP. You were previously questioned by the U.S. Marine Corps Criminal Investigation Division, and although no charges were referred against you at court martial, you were extended on active duty to testify as a witness in a court-martial and transferred to



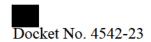
On 7 September 1993, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 9 June 1994, the Commanding Officer (CO), requested reconsideration of your administrative separations, stating that during your time with the command, you were a "productive, motivated Marine...it appears that a change of leadership techniques...was all it took to enhance this Marine's maturity and responsibility." Ultimately, the separation authority concurred with the original separation recommendation and, on 24 June 1994, you were discharged from the Marine Corps due to your misconduct and assigned an Other Than Honorable (OTH) characterization of service and an RE- 4 reentry code.

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 change your discharge characterization, (2) your contention that your misconduct was relatively minor in comparison to the severity of the discharge characterization, and (3) the positive endorsements provided by your CO and your Platoon Sergeant. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and excerpts from your record.

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 four NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the fact that it involved the circumvention of U.S. and foreign agreements. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy, and places an unnecessary burden on fellow service members. 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 or change to your narrative reason for separation.

While the Board carefully considered the evidence you submitted in mitigation, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of an OTH. Therefore, 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,

9/25/2023

