



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

██████████  
Docket No. 5528-23

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 filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 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 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).

During the enlistment process you acknowledged the requirement to participate in 48 scheduled drills and not less than 14 days of annual training per year for eight years upon completion of initial active duty training. On 19 January 1990, you enlisted in the U.S. Marine Corps Reserve (USMCR) and began active duty for training (ACDUTRA) on 23 January 1990. You completed ACDUTRA on 21 July 1990 and were transferred to the USMCR. You were called to active duty on 22 January 1991 and deployed to participate in Operation Desert Storm. You were released from active duty on 27 April 1991, and were transferred back to the USMCR.

Subsequently, you had nine unexcused absences and were warned that you must regain satisfactory status. After you failed to do so, you were notified for separation for Unsatisfactory Participation in the Ready Reserve. You did not acknowledge receipt of the notification of separation that was sent by certified return mail receipt on 27 February 1992. After waiving your rights by not returning your acknowledgement in a timely manner, the Commanding Officer

(CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization of service. On 31 May 1992, the SA accepted the recommendation and directed you be discharged. You were subsequently discharged.

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 was not limited, your request to upgrade your characterization of service and contentions after being released from active duty honorably, you donated blood at the American Red Cross and you were notified that you tested positive for AIDS, you showed the corpsman on duty at the time and you told him you were not coming back, and after a year you got tested again and it was negative. 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 that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unexcused absences from drills, 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. The Board noted that you did not provide any evidence to substantiate your contentions. Further, the Board noted that your record reflected a negative HIV test on 27 December 1991. Therefore, the Board was not persuaded by your contentions. 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,

10/26/2023

