



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. 6738-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 16 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 10 October 1989. During a period of 10 August 1990 to 17 March 1991, you were deployed in support of Operations Desert Shield and Desert Storm. On 1 August 1991, you received nonjudicial punishment (NJP) for wrongful appropriation a telephone credit card from a fellow Marine. On 7 November 1991, you were counseled for failure to comply with orders and regulations that establish the standards of good conduct, order, and discipline from code of military justice. You were advised that failure to take corrective action could result in administrative separation. On 8 November 1991, you were counseled concerning insubordinate conduct towards a noncommissioned officer. You

were advised that failure to take corrective action could result in administrative separation. On 12 May 1992, you received a second NJP for two instances of breach of peace by wrongfully discharging a firearm in public and endangering human life, and one instance of disorderly conduct. As a result, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, at which point, you requested to have your case heard by an Administrative Discharge Board (ADB). On 17 December 1992, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious offense. On 3 March 1993, you waive your right to a case hearing by an ADB. On 2 April 1993, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 29 April 1993, you were so discharged.

On 26 September 2017, this Board denied your previous request for a discharge characterization upgrade.

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 for a discharge upgrade and contentions that: (a) mistakes were made on your part before, during, and after you served in the Marine Corps, (b) you believe it should not be a lifelong punishment because you served and had only 6 months left before the end of your contract obligation, (c) you had a lot of childhood trauma with guns being pulled on you along with mental and physical abuse, (d) your records were padded to look like you were a bad person, (e) you do not remember receiving two NJPs or being counseled for any charges, (f) your attorney advised you that you will still receiving your Department of Veterans Affairs (VA) benefits. The Board noted you checked the "PTSD," "TBI," and "Other Mental Health" boxes on your application but provided no evidence in support of your claims. For purposes of clemency and equity consideration, the Board noted you provide a memorandum concerning Gulf War veterans, correspondence from the VA, Employment Eligibility Verification Form, copy of GPA document, four Letters of Appreciation, two Certificates of Appreciation, six Certificates of Course Completion, and your Fire Department Performance appraisals.

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 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. Additionally, the Board considered the likely negative impact it had on the good order and discipline of your unit. Further, the Board noted you were counseled in numerous occasions concerning your deficiencies but continued to commit misconduct. While the Board considered your contentions that you were unaware of your NJPs or counselings, they were not persuaded since your record is replete with your acknowledgements in each instance. Finally, the Board noted you provided no evidence to substantiate your contention that your record was manipulated to augment your record of misconduct. 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 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,

10/25/2023

