



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. 7517-23
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 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 20 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 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).

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 enlisted in the U.S. Marine Corps and began a period of active duty on 26 September 1980. On 21 April 1982, you were assigned to military weight control program. On 1 June 1982, you received non-judicial punishment (NJP) for larceny. You were then removed from the military weight control program on 23 June 1982. You submitted a request for reenlistment on 17 October 1983. You were placed back on weight control program and directed to follow the doctor's orders on losing weight. On 12 March 1984, your Commanding Officer (CO) reported that you did not meet requirements for the height and weight standards for reenlisting. On

30 April 1984, you were reduced in rank for being out of standards. Based on your inability to maintain weight standards, your CO recommended to the Separation Authority (SA) that you be discharged for Unsatisfactory Performance, failure to conform to weight standards.

However, you received your second NJP, on 11 May 1984, for failure to go to your appointed place of duty, driving on base on suspended privileges, and making a false official statement. Your final trait averages were 3.5 for conduct and 3.9 for duty proficiency.

Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 8 June 1984 with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Unsatisfactory Performance-Failure to conform to weight standards," your separation code is "JHJ1," and your reenlistment code is "RE-3P."

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 contention that you did your job very well and would like an upgrade to Honorable. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your failure to maintain weight control standards and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the length of time for you were afforded to get within standards, you gained weight during your assignment to the weight control program, and that you never reached the reduction goal. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN. Furthermore, based on your record, the Board noted your conduct trait average was below what was required for an Honorable characterization of service. Therefore, the Board was not persuaded by your arguments. As a result, the Board concluded significant negative aspects of your service outweighs the positive aspects and continues to warrant a GEN. 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,

10/5/2023

