



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. 9332-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 January 2024. 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).

You enlisted Marine Corps Reserves and commenced service on 11 June 1986. On 24 July 1986, you received non-judicial punishment (NJP) for wrongfully writing, "light duty" on your sick call chit. On 19 August 1987, you were issued an administrative remarks counseling concerning deficiencies in your performance and/or conduct specifically related to the need to exercise a greater appreciation for authority figures. Shortly thereafter, on 20 August 1987, you again received NJP, this time for acting in a manner prejudicial to good order and discipline.

Approximately two years later, on 23 September 1989, you missed a scheduled drill. On 7 October 1989, you received a third NJP, for disrespectful language toward a SSgt, disobeying a lawful order, and committing assault on the SSgt by pointing a finger at him while threatening to do bodily harm. On that same date, you were issued an administrative remarks counseling concerning deficiencies in your performance. You were warned that failure to take corrective action may result in administrative separation or judicial proceedings.

Thereafter, between 18 November 1989 and 5 August 1990, you missed seven scheduled drills. During that period, on 15 February 1990, you were issued a letter notifying you of the intention to reduce you in rank for unsatisfactory participation in the reserves. Also, during this period, on 3 March 1990, 26 April 1990, 2 June 1990, and 9 July 1990, you were counseled concerning missed drills. Lastly, on 7 July 1990, you were reduced in rank to private.

Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to failure to participate. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason unsatisfactory participation in the selected Marine Corps Reserve. The separation authority concurred with the ADB and directed an OTH discharge by reason of unsatisfactory participation. On 5 February 1991, you were so 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 were not limited to, your desire to change your discharge characterization of service and your contentions that your record in not in error, you now see the error of you ways, you realized how short life is and desire to have a color guard and flag at your own funeral, if you could do it all over again, you would definitely do better, and that you realize the importance of your military status. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and your repetitive failure to attend drills, outweighed these mitigating factors. The Board considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to administrative separation. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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.

The Board expressed their appreciation your honesty and humility in accepting responsibility for your actions. The Board also expressed their condolences for the loss of your father.

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,

1/24/2024

