



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. 9573-23
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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and considered your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 November 2023. The names and votes of panel members will be furnished upon request. Your allegations of error or 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 Reserve on 17 July 2008 and completed an initial period of active duty for training. Upon completion of your initial training period, you were transferred to your Reserve unit. On 27 September 2009, 23 January 2010, and 26 March 2010, you were not recommended for promotion as a result of your lack of responsibility and your failure to meet professional military education requirements. From 27 September 2009 through 26 April 2010, you were counseled multiple times concerning your performance and/or conduct for failure to attend mandatory drills. Certified mail correspondence was sent to you, on 23 February 2010, regarding your unsatisfactory (unsat) participation in the Reserves due to your unexcused

absences. You were subsequently notified, again via certified mail, of your pending administrative processing for unsatisfactory drill participation, for which you did not return requested documentation within the allotted time noted on the administrative notification mailed to you.

On 21 June 2010, your commanding officer (CO) recommended you be discharged for your unsat participation with an Other Than Honorable (OTH) characterization of service stating, “On 20100205, [Petitioner] came to the home training center to turn in his equipment issue. After a lengthy discussion on the ramifications of not fulfilling his commitment as an SMCR Marine, he stated that he finds it hard to take orders from people he feels are below him. [Petitioner] was instructed that regardless of his personal feelings on following orders from enlisted Marines, he still signed a contractual obligation to be an SMCR Marine. [Petitioner’s] mandatory drill stop date 20140720, based on his complete disregard, and failure to honor this commitment, he has proven he is not worthy of the title of Marine. His complete lack of courage, demonstrates exactly what type of individual he is and he has my highest recommendation for separation from his SMCR commitment under Other than Honorable Conditions.” Ultimately, you were discharged with an OTH for unsatisfactory participation in Ready Reserve.

On 21 January 2020, your request to the Naval Discharge Review Board for a discharge upgrade was denied.

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 upgrade your discharge and your contentions that: (1) you believe there was a misjudgment in the characterization of your departure from the Marine Corps, (2) the circumstances surrounding your discharge were emotionally complex as you were suffering from the loss of a dear friend to suicide, (3) you were a lay-reader and responsible for detecting signs of distress, and (4) the emotional toll of this experience was not adequately recognized or addressed by your command at the time. For purposes of clemency and equity consideration, the Board noted you provided a personal statement.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your multiple missed drills and unsatisfactory performance as a Marine Corps reservist, outweighed these mitigating factors. The Board noted you provided no evidence to substantiate your contentions and was not persuaded by your mitigation arguments. 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find 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 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 is attached 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,

12/7/2023

