

## DEPARTMENT OF THE NAVY

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

> Docket No. 152-24 Ref: Signature Date

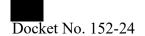


## Dear Petitioner:

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 2 February 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 in the Marine Corps and commenced a period of active duty on 23 Sep 1988. Prior to enlisting, on 11 September 1988, you were granted a waiver for prior to service involvement with law enforcement for possession of alcohol, public intoxication, and resisting arrest. On 11 July 1989, while assigned in the growing a lawful order for being found "out in growing while on light duty and growing a lawful order for being found "out in growing while on light duty and growing entry for an orders violation by failing to properly escort a guest from a U.S. facility. On 12 January 1990, you received non-judicial punishment (NJP) for violating a lawful order by drinking alcohol in the barracks. On 21 July 1991, you were counseled, again, on the need to not let personal differences interfere with your responsibilities as a non-commissioned officer. On 21 May 1992, you were arrested by civil law enforcement for carrying a gun into an alcohol establishment, attempted armed robbery, carrying a concealed weapon, and assault by pointing a



gun. On that same date, you were notified of administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to commission of a serious offense. You waived your rights to consult with legal counsel and request an administrative discharge board (ADB), but elected your right to submit a statement. The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 16 July 1992.

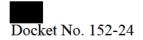
Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 21 November 1994, based on their determination that your discharge was proper as issued.

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 characterization of service and change your narrative reason for separation and separation code, to "Secretarial Authority." You contend that (1) after 30 years your discharge has surely satisfied its purpose, and (2) it would be inherently unjust to let the stigma continue for the rest of your life.

For purposes of clemency and equity consideration, the Board considered your counsel's brief, and the additional supporting documentation you provided, including your DD Form 214, various service record documents, your personal statement, and 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 NJP and civil arrest, outweighed these mitigating factors, and that your record was not otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

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 and commends you on your post-discharge accomplishments and good character, 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 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.

