



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

█  
Docket No. 829-24  
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 reconsideration application on 1 March 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).

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 service on 3 February 1986. Your pre-enlistment physical examination, on 28 February 1985, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On your enlistment application, you disclosed pre-service marijuana use, juvenile burglary and shoplifting convictions, but you denied engaging in homosexual activity.

On 3 October 1986, you received non-judicial punishment (NJP) for an unauthorized absence (UA). You did not appeal your NJP. On 20 November 1987, you received NJP for both UA and

insubordinate conduct. You did not appeal your NJP.

On 7 December 1987, you received NJP for two (2) separation specifications of insubordinate conduct, and for wrongfully communicating a threat. You did not appeal your NJP. A portion of the NJP was suspended for six (6) months. On 10 December 1987, your command issued you a "Page 11" retention warning (Page 11) documenting your frequent involvement with military authorities as evidenced by your three (3) NJPs. The Page 11 advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not elect to submit a Page 11 rebuttal statement.

On 16 December 1987, your command issued you a Page 11 documenting certain misconduct on the rifle range that could have resulted in an injury to yourself or other Marines. The Page 11 warned you that any further incidents of misconduct could result in administrative/disciplinary action. You did not elect to submit a Page 11 rebuttal statement. On 22 December 1987, the suspended portion of your NJP from 7 December 1987 was vacated and enforced due to your continuing misconduct.

On 7 February 1988, you commenced a period of UA that terminated on 16 February 1988. On 30 March 1988, you were convicted at a Summary Court-Martial (SCM) for your 9-day UA. You were sentenced to confinement for twenty-one (21) days, a reduction in rank to the lowest enlisted paygrade (E-1), and forfeitures of pay. On 7 April 1988, the Convening Authority approved the SCM sentence.

On 29 September 1988, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. On 13 October 1988, the Staff Judge Advocate for the General Court-Martial Convening Authority determined your administrative separation was legally and factually sufficient. Ultimately, on 27 October 1988, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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) you have carried the shame and burden of the OTH since your discharge, (b) your misconduct stemmed from your misuse of alcohol as a coping mechanism due to your sexual preferences being the opposite of what the U.S. Armed Forces viewed at the time, (c) post-service you have undergone much needed counseling and have become a productive member of society, and (d) you have never had any alcohol-related issues criminally as well as administratively. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board determined there was no credible or convincing evidence in the record to indicate your separation was based on homosexuality. The Board concluded that the sole underlying basis for your administrative separation was the aforementioned record of misconduct.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly 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 Marine. The Board determined that the record clearly reflected your pattern of 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.5 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board determined that your cumulative misconduct totaling three (3) NJPs and one (1) SCM was not minor in nature. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge career with , 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.

Sincerely,

3/7/2024

