



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

■  
Docket No. 0846-24  
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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 5 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 this 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 United States Marine Corps and commenced a period of active duty on 21 May 1986. On 26 June 1987, and again three months later, you were formally counseled for failure to be at an appointed place of duty on time. On 28 July 1987, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for wearing a camouflage utility uniform off station. You did not appeal this NJP.

From 18 September 1987 to 20 May 1988, you were formally counseled on four separate occasions regarding your financial irresponsibility. On 7 April 1988, you received your second NJP for violating UCMJ Article 123a, for uttering two checks that you knew you didn't have

sufficient funds to cover. On 20 May 1988, you again received NJP for violating UCMJ Article 123a, this time for uttering one worthless check.

On 12 September 1988, you began a period of unauthorized absence (UA) from your unit, and did not return to military control until 12 October 1988. On 27 October 1988, charges were referred to Special Court-Martial (SPCM) for violations of Article 86, for a 30-day period of UA, and Article 95, for escaping the custody of a prisoner escort. Two additional changes were later added to the charge sheet related to violations of Article 86, failure to go to restricted muster, and Article 89, for disrespect towards a superior commissioned officer. On 28 November 1988, in accordance with MARCORSEPMAN, par 6419, you requested to be separation in lieu of trial (SILT) by court martial related to the pending SPCM charges. You acknowledged your rights and understood that if your request was accepted, you would be discharged under Other Than Honorable (OTH) conditions. The separation authority accepted your request, directing your administrative discharge from the Marine Corps. On 20 January 1989, you were discharged with an OTH characterization of service and an "RE-4" reentry code.

You previously submitted an application for consideration to the Naval Discharge Review Board and were denied relief on 22 May 1991. You also submitted petitions to this Board and were denied relief on 2 April 1996 and 29 April 2010.

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: (1) your desire to upgrade your discharge characterization, receive pay and allowances, and remove negative evaluations from the record, (2) your assertion that going absent without leave (AWOL) to "whistleblow" is a protected act, (3) your allegation that you were misled by inadequate counsel and was never advised of your rights as a whistleblower, and (4) your contention that your command targeted you. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

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 administrative counseling warnings, NJPs, and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its negative impact on the mission. The Board determined that such misconduct is contrary to Marine Corps values and policy and places an unnecessary burden on your chain of command. The Board felt that your command gave you a substantial amount of time to resolve you financial issues through numerous counseling warnings. The Board found no evidence in your record that you made a protected communication under the Whistleblower Protection Act, or that your chain of command retaliated against you after making a protected communication. The Board could not find any evidence related to drug allegations against you, or any pending charges related to such. In regards to the pending SPCM charges, the Board highlighted that you requested separation in lieu of trial, thereby avoiding a possible court martial conviction and punitive discharge. In your SILT request, you clearly state that you understand your rights and that "I am completely satisfied with the advice of my lawyer." The Board felt that the separation

authority already granted you clemency by accepting your separation in lieu of trial by court martial. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and even in light of clemency considerations, the Board concluded that your misconduct clearly merited your receipt of an OTH. 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.

As discussed above, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, █

█ Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

2/12/2024

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