



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

■
Docket No. 1101-24
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 12 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 as a drilling reservist on 25 July 2000. You were required to attend forty-eight drills and no less than fourteen days of active duty for training per year. You were issued administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct, specifically for unexcused absences from drills on: 21 June 2001 to 22 June 2001, 14 July 2001 to 15 July 2001, 7 September 2001 to 9 September 2001, 3 November 2001 to 4 November 2001, and 8 December 2001 to 9 December 2001. You were advised each time that any further deficiencies in your performance and/or conduct may result in processing for administrative discharge.

You were activated/mobilized for participation in support of Operation Enduring Freedom/Iraqi Freedom and commenced active duty on 4 February 2002.

On 12 April 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 11 December 2002, you received NJP for UA and an orders violation and received Page 11 counseling concerning your conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and/or processing for administrative discharge. On 28 February 2003, you received Page 11 counseling for being UA. On 11 August 2003, you received NJP for UA, provoking speeches, or gestures, and three specifications of failure to obey a lawful order.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 3 February 2004 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Pattern of Misconduct (Board Waived)," your reentry code is "RE-4," and your separation code is "HKA1;" which corresponds to misconduct – pattern of misconduct.

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 you were scared of what you were about to face as a young reservist getting called to active duty during 9/11, your roommates had unopened alcohol in their lockers that was discovered by the acting sergeant, the sergeant said "I got you now boy," racism and discrimination were factors in the discharge you received, you were not knowledgeable of the administrative discharge process and how you could have received a different character of discharge, and that you believe you earned an Honorable or General (under Honorable Conditions) discharge. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your separation due to a pattern of misconduct. Therefore, contrary to your contention, the Board determined your relatively brief active duty service was not Honorable. Finally, the Board further noted you provided no evidence, other than your personal statement, to substantiate your contentions of unfair treatment. 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.

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,

3/1/2024

