



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

█  
Docket No. 8856-23  
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 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 22 April 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, 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 began a period of active duty on 7 February 2000. On 7 August 2000, you received nonjudicial punishment (NJP) for unauthorized absence (UA) from appointed place of duty, and failure to obey a lawful order. On 18 October 2001, you were counseled for failure to obey a lawful order by accessing pornographic material over the internet. On 3 December 2001, you began a period of UA which lasted three-days. On 19 December 2001, you received a second NJP for two instances of UA. On 14 February 2002, you began a second period of UA which lasted 11 days and resulted in your third NJP on 14 March 2002. On 22 April 2002, you were convicted by summary court martial (SCM) for breaking restriction. You were sentenced to forfeiture of pay and restrictions for a period of 60 days.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) by reason of

misconduct due to pattern of misconduct. The separation authority approved the recommendation and, on 19 June 2002, you were so discharged.

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 were suffering with grief due to the loss of your mother, (b) you went into service too soon after her passing, (c) you wanted to leave to take care of your father, (d) you received misconduct due to your involvement with a married woman, (e) you became a person who is committed to family and never been in any type of trouble since you were separated from service. Additionally, the Board noted you checked the "Other Mental Health" box on your application but did not provide any supporting evidence of your claim. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board noted that you were given multiple opportunities to correct your conduct deficiencies but continued to commit misconduct. Further, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Finally, the Board noted that you were involved in multiple incidents of misconduct unrelated to your stated involvement with a married woman.

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 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 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,

5/12/2024

