



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

█  
Docket No. 3039-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 15 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active duty in December 1980. On 23 April 1982, you were counseled concerning individual responsibilities to be at work on time, and your poor performance as a lance corporal. You were advised that failure to take corrective action could result in nonjudicial punishment (NJP). On 20 January 1983, you were counseled concerning your failure to be at your appointed place of duty and responsibilities and actions expected from a Marine. On 21 January 1983, you began a period of unauthorized absence (UA) which lasted three days. On 17 February 1983, you were counseled concerning your failure to abide by the USMC policy concerning women in the barracks and sponsorship. On 22 February

1983, you were counseled concerning your failure to provide proper care and security for your DD2MC. You were advised that failure to take corrective action could result in disciplinary action. On 2 March 1983, you received an NJP for the aforementioned period of UA.

On 26 May 1983, you began a period of UA which lasted eight days and resulted in your apprehension by civil authorities. On 3 June 1983, you were counseled concerning frequent involvement by being in an unauthorized status and by not abiding USMC rules and regulations and higher authority. You were advised that failure to take corrective action could result in administrative separation. On 11 July 1983, you received a second NJP for UA, wrongful appropriation of SRB property of the U.S. Government, wrongful appropriation of property of the U.S. Government valued at \$7.00, and six instances of breaking restrictions.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to minor disciplinary infractions and you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to minor disciplinary infractions. In the meantime, between 29 August 1983 and 12 September 1983, you began two periods of UA totaling eight days. On 7 November 1983, you were convicted by summary court martial (SCM) for three instances of UA, UA from appointed place of duty, stealing property of the U.S. Government, and communicating a threat. You were sentenced to confinement at hard labor for a period of 30 days, and forfeiture of pay in the amount of \$382.00 for a period of one month. On 6 February 1984, the separation authority approved and ordered an OTH discharge characterization by reason misconduct due to minor disciplinary infractions. On 20 February 1984, 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 felt you were not being treated fairly because of the color of your skin, and (b) you were harassed by your superiors and no longer wanted to be part of the military. For purposes of clemency and equity consideration, the Board noted you did provide copies of three character letters of support.

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. Further, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but continued to commit misconduct. Finally, the Board considered that you provided no evidence, other than your personal statement, to substantiate your contention 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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 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,

5/2/2024

