



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

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Docket No. 4190-24

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 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 21 June 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 21 October 1996. Your pre-enlistment physical examination, on 11 June 1996, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You stated that you never had an adverse reaction to a serum, drug, or medicine on your self-reported medical history.

On 6 October 1998, you received non-judicial punishment (NJP) for: (a) insubordinate conduct, (b) failure to obey a lawful order, (c) provoking speeches and gestures, (d) disorderly conduct, and (e) indecent language. You did not appeal your NJP.

On 4 February 1999, your command issued you a “Page 11” warning (Page 11) for refusing to submit to an anthrax vaccination in accordance with the established Department of Defense force protection plan. On 19 February 1999, you received NJP for the willful disobedience of a superior commissioned officer for failing to report the ██████████ BAS to receive your anthrax vaccination. You appealed your NJP; however, on 2 March 1999, the General Court-Martial Convening Authority denied your NJP appeal.

On 31 March 1999, you received NJP again for the willful disobedience of a superior commissioned officer for failing to go to the BAS to receive your first anthrax shot. You did not appeal your NJP.

On 14 April 1999, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You expressly waived in writing your right to request an administrative separation board. Ultimately, on 18 May 1999, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were 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 are pursuing an upgrade to register your family’s business as a “Veteran Owned Small Business” (VOSB), (b) on active duty you demonstrated exceptional performance, and received commendations even while receiving multiple NJPs, (c) unfortunately, your discharge was rooted in your anthrax vaccination refusal which led to a pattern of misconduct over six months, (d) a quarter-century later, you remain steadfast in your beliefs but seek an upgrade to further your family owned small business, which would be a testament to your dedication as a Veteran entrepreneur, and (e) you have always and will maintain the highest respect for the Department of Defense and the United States of America. 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. 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 noted that any anthrax vaccination mandate served a valid military purpose was based on military readiness and safety concerns, and the Board concluded that the anthrax vaccination policy in no way represented a broad military/government overreach and infringement of personal liberties and privacy rights. The Board determined that the order to receive that anthrax vaccination was a lawful military order, only to be disobeyed at one’s peril. The Board determined that the record clearly reflected your 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.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' (including VOSB status), or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

6/26/2024

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Executive Director

Signed by: █