



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

██████████
Docket No. 4938-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 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 to 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 25 March 2002. On 26 May 2005, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 92 due to travelling out of bounds during leave and Article 86 for failing to check in off leave at the required time. You were reduced to the paygrade of E-2, placed on restriction with extra duties for 45 days, and formally counseled that further misconduct could result in administrative separation.

On 1 June 2005, you were counseled regarding your body composition not being within standards. You were also counseled, on 20 June 2005, for failure to follow procedures outlined in technical manuals when performing maintenance on a fan motor, which had resulted in electrical burns to your hands requiring six days of light duty. Shortly thereafter, on 18 July

2005, you were subject to a second NJP for another violation of Article 86 due to your unauthorized absence (UA) from restriction muster. You were reduced to the paygrade of E-1, placed on an additional 30 days of restriction with extra duty, although 15 of those days were suspended, and you were again counseled the further misconduct could result in administrative separation.

On or about 22 September 2005, you were convicted by civilian authorities for intoxicated manslaughter with a motor vehicle after you drove off the highway and struck a guardrail, which resulted in your passenger being ejected. Your punishment included 10 years supervised probation, 180 days of confinement, 600 hours of community service, impact treatment, and a \$1500 fine plus court costs. Consequently, you were notified of processing for administrative separation by reason of misconduct due to civilian conviction and pattern of misconduct, and you requested a hearing before an administrative separation board (ADB). The ADB found both bases of separation were supported by a preponderance of the evidence and recommended that you be separated with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for the primary basis of pattern of misconduct and you were so discharged on 5 May 2006.

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 upgrade your discharge to "Honorable" and change your narrative reason for separation to "Secretarial Authority." You contend that you have worked hard to overcome the challenges of your discharge and your post-discharge behavior warrants an upgraded characterization on the basis of equity, your family and friends have offered their support in speaking of the man you have become, your supervisor for the past five years describes your exceptional work ethic, positive attitude, and efforts as a team player, and you have worked to further your contribution to society by obtaining a certificate in entrepreneurship from ██████████ in addition to attending school to become a Certified Nursing Assistant (CNA). For purposes of clemency and equity consideration, the Board noted you provided advocacy letters describing post-service accomplishments.

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 civil conviction, 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 considered the likely discrediting effect your civil conviction had on the Marine Corps. The Board noted that your civil conviction involved the death of your passenger while you were driving intoxicated.

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 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 is attached 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,

7/19/2024

