



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. 6206-24
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 1 November 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 12 September 2000. Your enlistment physical examination, on 28 April 2000, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling.

On 8 August 2001, you received non-judicial punishment (NJP) for disobeying a lawful order. You did not appeal your NJP. On 13 March 2002, you received NJP for: (a) five (5) separate

unauthorized absence (UA) specifications, (b) insubordinate conduct, (c) failing to obey a lawful order, and (d) sleeping on post. You did not appeal your NJP.

On 5 June 2002, you were convicted at a Summary Court-Martial (SCM) of: (a) conspiracy to commit larceny, and (b) receiving stolen property belonging to another Marine. You were sentenced to confinement for thirty (30) days, a reduction in rank to Private (E-1), and forfeitures of pay. The Convening Authority approved the SCM sentence and granted you twenty-nine (29) days of pretrial confinement credit, and remitted one (1) day of adjudged confinement from your sentence.

On 17 July 2002, your command issued you a "Page 11" retention warning (Page 11) documenting your UA for failing to return at the appointed time from a liberty weekend, and for failing to report to unit PT on 9 July 2002. The Page 11 advised you that a failure to take corrective action, or further infractions of the law, or any further UCMJ violations will result in disciplinary action, administrative separation, or limitation of further service. However, on 5 September 2002, you received NJP for UA. You did not appeal your NJP.

On 29 October 2002, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. On 30 October 2002, you waived your rights to consult with counsel and to elect your right to request an administrative separation board.

On 11 December 2002, the Staff Judge Advocate to the Separation Authority determined your administrative separation was legally and factually sufficient. Ultimately, on 20 December 2002, 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 have contributed to your community as well as bettered yourself, and (b) "[t]he misconduct was thinking I was doing the right thing." Additionally, the Board noted you checked the "PTSD," "Other Mental Health," and "Reprisal/Whistleblower" boxes on your application but chose not to provide any evidence of your claims. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application, which consisted solely of the information you included on your DD Form 149.

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 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.4 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct and blatant disregard for good order and discipline while in the Marine Corps 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,

11/19/2024

