



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. 6871-24
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 9 August 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 31 June 1988. Of note, you pre-service disciplinary history included an arrest for carrying a concealed weapon. On 1 September 1989, you were tried by Special Court-Martial (SPCM) and convicted of disrespecting a superior officer, willfully disobeying a superior commissioned officer, and impeding an investigation by taking a .22 caliber pistol and hiding it in an unknown location. Your sentence included a reduction to the paygrade of E-1, which was suspended, and forfeiture of \$466 pay.

You were issued administrative counseling twice in May 1990. The first advised you to do what you are told, due to your failure to obey orders, with a warning that continued misconduct could result in separation. The latter documented that your driving privileges had been revoked for six

months as a result of a traffic court ruling. In spite of this counseling, you were subject to nonjudicial punishment (NJP), on 1 June 1990, for giving another Marine a temporary vehicle pass for personal use and driving a personally owned vehicle in spite of the revocation of your driving privileges. Your punishment resulted in your reduction to the paygrade of E-2, 30 days in correctional custody (CC), and forfeiture of \$405 per month for two months.

After the conclusion of your period in CC, you deployed in support of Operations DESERT SHIELD and DESERT STORM from 16 August 1990 through 16 April 1991. However, you were administratively counseled on 15 June 1991, shortly after your return from deployment, for issuing checks with insufficient funds.

You were arrested by civil authorities and held pending charges from 29 June 1991 until 15 October 1991. For allegations unrelated to your pending civil charges, on 24 October 1991, you were advised of your rights incident to NJP and you initially accepted. However, you subsequently requested trial by court-martial. On 12 December 1991, three specifications for allegations of violating Article 91 were charged against you, then preferred and referred to SPCM. The charge sheet specified that you had willfully disobeyed a lawful order from an E-4 to call back to the communications section, willfully disobeyed a lawful order from an E-8 “not to go to ██████████,” and used disrespectful language toward an E-5 in the execution of his office by using obscenities in addressing your unwillingness to do “a f*ing thing around here” due to your discontent with the communication section not helping you “when you have problems with your wife.”

Although you had initially refused NJP and demanded trial, you subsequently requested separation in lieu of trial (SILT), on 8 January 1992, after consulting with legal defense counsel and assessing your options. As part of your SILT request, you acknowledged guilt to the charged offenses. In an undated endorsement which favorably recommended that your SILT request should be approved, your commanding officer noted that SILT is not customary for less severe disobedience and disrespect offenses, for which “a bad-conduct discharge is unlikely to be adjudged” but that other factors made approval appropriate; to include that you had recently been released from civil confinement on bail for charges involving robbery and assault with a loaded shotgun, and your trial date was still pending. As a result, your commanding officer advised that “Expeditious discharge under other than honorable conditions [would] be in the best interests of the Marine Corps.” Your request was approved, and you were so discharged on 31 January 1992.

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 reflect that it was under honorable conditions and your contentions that you believe you were misled into submitting your SILT request due to the pending civil charges against you, for which you claim that you had been framed by a group of Marines who committed the crimes. You state that you were later exonerated. Additionally, the Board noted you checked the “Other Mental Health” box on your application but chose not to respond to the Board’s request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you provided four letters of support regarding your post-discharge character, behavior, and rehabilitation, and supporting evidence that clarified the atypical circumstances of the SPCM charges for which you requested SILT.

