



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. 6898-24
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 application on 19 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 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 Marine Corps and commenced active duty on 3 October 1986. On 12 February 1987, you received non-judicial punishment (NJP) for sleeping in your rack while being posted as a sentinel. On 10 March 1987, you received NJP for being absent from your appointed place of duty. Additionally, on 23 March 1987, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You received Page 11 counseling, on 2 April 1987 and again on 22 July 1987, for failure to obey orders and follow instructions. On 28 December 1988, you commenced a period of unauthorized absence (UA)

that ended on 3 January 1989. On 4 January 1989, you received NJP for UA from 28 December 1988 to 3 January 1989.

On 18 September 1989, you received Page 11 counseling for frequent involvement with civilian authorities and it was noted that you had worthless check charges pending. Between 25 September 1989 and 1 November 1989, you pleaded guilty in civilian court to a total of seven worthless checks totaling \$516.49.

On 20 November 1989, you received NJP for uttering four worthless checks totaling \$237.00 at the Marine Corps Exchange between June and October 1989.

On 12 April 1990, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to civilian conviction. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 14 May 1990.

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 change your discharge characterization of service and your contentions that you need Department of Veterans Affairs benefits, your family circumstances mitigated the misconduct from December 1988 to January 1989, and your command only chose to administratively separate you for that misconduct, in May of 1990, after you refused to reenlist. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect it had on the Marine Corps. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were not separated for the UA incident you describe in your application that occurred seventeen months prior to your discharge and that you were processed for separation due to the civilian conviction that occurred six months prior to your discharge. The Board further noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for misconduct due to a civilian conviction. Further, the Board observed that you provided no evidence, other than your statement, to substantiate your contention that you were discharged for misconduct as a reprisal for refusing to reenlist. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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. 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,

9/13/2024

