



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

█  
Docket No. 7127-24

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 27 September 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).

You enlisted in the U.S. Marine Corps Reserve (USMCR) on 30 November 1992. As part of your enlistment application, you signed and acknowledged the "Statement of Understanding Upon Enlistment in the Marine Corps Reserve Optional Enlistment Program (ROEP)" (SOU). The SOU informed and expressly advised you, and you understood and acknowledged that: (a) satisfactory participation consists of attendance at and satisfactory performance of 48 scheduled drills and not less than 14 days (exclusive of travel time) of active duty for training during each year of your contract, (b) you would be required to attend drills and training periods as prescribed, and understood that failure to do so may result in my being ordered to active duty by the Commandant of the Marine Corps for a period of two (2) years less any period of active duty or active duty for training you may have already served, and (c) while in a drill unit status you would not be excused from active duty for training for the purpose of attending college.

You commenced Marine Corps initial recruit training, on 30 November 1992, and were honorably discharged at the completion of your required active service on 3 June 1993. Upon your discharge, you were initially assigned to a drilling USMCR unit located in ██████████, ██████████; a short driving distance from your listed home of record address of ██████████, ██████████.

You had unexcused absences from your regularly scheduled USMCR drills over the 7-9 February 1995 and 10-12 April 1995 drill weekends, respectively. According to your command, you also refused to perform "EIOD/RIDT" drills to make up for your absences. As a result, you put yourself in a situation where you no longer met the minimum prescribed levels of drills necessary to qualify as a satisfactory participant in the USMCR.

On 20 April 1995, your command notified you that you were being processed for an administrative discharge (Adsep) by reason of unsatisfactory participation in the Ready Reserve. Your command unsuccessfully attempted to personally serve you with the notification and election of rights Adsep paperwork to the last known address, in ██████████, ██████████, that you provided to your command. Your command also mailed your notification of separation proceedings and your election of rights form via U.S. Certified Mail to your last known address. The Adsep notification expressly advised you that you had twenty (20) working days from the date of the letter to complete and return the Adsep acknowledgement and election of rights form, and that a failure to timely respond by the time prescribed would constitute a waiver of your rights in connection with the proposed Adsep.

On 31 May 1995, your commanding officer (CO) recommended to the Separation Authority (SA) that you receive an under other than honorable conditions (OTH) characterization of service by reason of your unsatisfactory participation in the USMCR due to your unexcused absences. The basis for the CO's recommendation was your excessive unexcused absences, and your failure to take corrective action or to satisfactorily participate in EIOD/RIDT.

The Staff Judge Advocate to the SA determined your administrative separation was legally and factually sufficient. Ultimately, on 24 July 1995, you were discharged from the USMCR for unsatisfactory participation in the ready reserve with an 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) although you are still serving your country the best way possible, you have goals to advance and exceed at your job, but cannot do so because of your undesirable discharge, (b) you love your country and the USMC, and wish to remain close to the USMC and veterans who have served, (c) this same respect, motivation, and devotion drive your discharge upgrade request as you wish to be counted among the USMC's honorably discharged members, which you consider to be an enormous part of your life, (d) in the interest of justice, your upgrade request is appropriate and warranted, and (e) you were not given a reasonable opportunity to mitigate or correct your mistake/behavior and instead were administratively separated. For purposes of clemency and equity consideration, the Board considered the totality 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. First and foremost, the Board noted that, contrary to your contentions, your command did indeed provide you with a reasonable opportunity to mitigate or correct your mistake/behavior, but you failed to do so.

The Board did not otherwise believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The simple fact is that you failed to attend certain regularly scheduled weekend drills while you were still contractually obligated to serve, without any legal justification or excuse, and that your cumulative absences deemed you an unsatisfactory participant in the USMCR. 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 grant your request solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for 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 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,

10/3/2024

