



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

█  
Docket No. 7490-24

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 18 October 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 and began a period of active duty service on 27 May 1987. Your enlistment physical examination, on 27 May 1987, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling.

On 24 June 1988, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On 30 June 1988, your command issued you a "Page 11" retention warning (Page 11) documenting the misconduct underlying your NJP. The Page 11 advised you that any further misconduct will result in NJP, and could lead to an administrative separation.

On 22 September 1988, you received another NJP for UA. On the same day, your command issued you another Page 11 retention warning. You appealed your NJP; however, higher authority denied your appeal your 14 October 1988. On 20 December 1989, your command issued you a Page 11 warning for yet another UA.

On 2 July 1990, you received NJP for three (3) separate specifications of disobeying a lawful order or regulation. You did not appeal your NJP. On 13 July 1990, your command issued you a Page 11 documenting your multiple Page 11 entries. The Page 11 advised you that any further disciplinary infractions or continuation of deficient performance may result in an administrative discharge. On 22 July 1990, your command issued you a Page 11 warning advising you that your repeated misconduct will not be tolerated. On 28 September 1990, your command vacated and enforced the suspended portion of your July 1990 NJP due to your continuing misconduct.

On 11 October 1990, you were notified that you were being processed for an administrative discharge by reason of misconduct due to minor disciplinary infractions. You consulted with military counsel and, on 16 October 1990, you elected your right to request an administrative separation board (Adsep Board).

On 5 December 1990, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. Following the presentation of evidence and witness testimony, the four (4) Adsep Board members unanimously determined that you committed the misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the Marine Corps with an under Other Than Honorable conditions (OTH) characterization of service. On 17 December 1990, the Staff Judge Advocate to the Separation Authority determined your administrative separation was legally and factually sufficient. Ultimately, on 28 December 1990, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-3C reentry code.

On 11 September 1992, the Naval Discharge Review Board (NDRB) upgraded your discharge characterization to General (Under Honorable Conditions) (GEN). However, the NDRB did not make any other conforming changes to your DD Form 214, other than your character of service upgrade.

On 30 June 1999, this Board denied your discharge upgrade application. On 21 October 2004, Headquarters, Marine Corps denied your request to change/modify your RE-3C reentry code.

On or about 30 September 2022, you retired from the U.S. Army at the rank/pay grade of WO4.

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 change to your reason for separation. You contend that: (a) the misconduct leading to your separation was minor in nature, (b) you were charged with two UAs and entering the barracks through the fire exit, which you were ordered not to do, (c) your misconduct was infrequent – you received three NJPs, two while in ██████████ and a third after being reassigned, (d) the context of such punishments calls

their reliability into question, especially in light of you reaching out for help from your Congressman in resolving issues with your commander, (e) however, even if taken as true, such NJPs were the only instances of misconduct in your 32 years of service, (f) allowing your character to continue to be described as less than "Honorable" is an injustice that the Wilkie memo has empowered this board to correct, (g) since your separation from the Marine Corps, you have served honorably in the U.S. Border Patrol, the U.S. Army National Guard █  
█, and the U.S. Army, (h) after enlisting, you rose through the ranks, eventually accepting a commission as a warrant officer and earning additional promotions to CW4, and (i) you received so many awards and accolades that your retirement DD 214 required additional pages to contain them all. 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. 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 you were fortunate to have received an upgrade to GEN back in 1992, and the Board unequivocally concluded that no further upgrade was warranted despite having continued to serve in the U.S. Armed Forces. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated, at the time, 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.

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 less than fully Honorable discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge service in the Army, 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,

11/6/2024

