



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

Docket No. 7773-24  
Ref: Signature Date

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 16 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).

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 12 October 1983, after receiving waivers for the pre-service offenses of robbery and possession of stolen property, two counts of reckless driving, and eight minor driving infractions.

On 19 November 1984, you were found guilty at Summary Court Martial (SCM) of resisting apprehension by a military policeman (MP), willfully disobeying an MP, assaulting an MP, and drunk and disorderly conduct.

On 16 August 1985, you received non-judicial punishment (NJP) for attempted arson, assault upon a Lance Corporal (LCpl), communicating a threat to a LCpl, and drunk and disorderly conduct of a nature to bring discredit upon the Armed Forces. Additionally, 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.

On 11 October 1985, the Battalion Substance Abuse Officer's report indicated that you tested positive for cocaine, were found in possession of codeine and morphine, and that you were a hard-working Marine who had a tendency to get violent, whether drunk or sober. The report indicated you had potential for further service and no further disciplinary action was pending.

On 14 May 1986, you pleaded guilty at General Court Martial (GCM) to wrongful use of cocaine between 20 January 1986 and 30 January 1986, two specifications of assaulting a LCpl by grabbing his arms, shaking him, pushing him down, and holding him down, and for conspiring to commit an assault consummated by a battery of a Private First Class. You were sentenced to reduction in rank to E-1, forfeitures, and confinement.

Consequently, on 5 September 1986, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You elected to be represented by civilian counsel and requested an administrative discharge board (ADB). On 26 September 1986, you were released from confinement. On 3 October 1986, the ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to pattern of misconduct. The separation authority concurred with the ADB, approved, and directed an OTH discharge by reason of misconduct due to pattern of misconduct. On 23 December 1986, you were so discharged.

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 were found not guilty at court martial but were discharged anyway, your roommates falsely implicated you in an assault upon another Marine and later recanted their story, and that you spent \$5,000 for a private attorney for your ADB but were still discharged. 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 NJP, SCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command, specifically noting four incidents involving assault upon other Marines. The Board also noted you provided no

evidence, other than your personal statement, to substantiate your contentions and observed that you were found guilty, or pleaded guilty, to all four assault charges at your GCM. Finally, the Board 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 pattern of misconduct.

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,

11/3/2024

