



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. 8371-24
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 28 February 2025. 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).

You enlisted in the Marine Corps and began a period of active duty on 28 April 1978. After serving honorably, you immediately reenlisted as a corporal / E-4 on 16 June 1981.

Between 16 June 1981 through 31 October 1982, you received four performance evaluations. You received three from the initial chain of command present at your unit at the time of your arrival. These reports noted your good intentions and desire to excel, but documented performance issues with comments that stated you required an "inordinate amount of guidance" in your fiscal duties, were receptive to counseling but lacked initiative or attention to detail, required an abnormal amount of close supervision, and had attained knowledge of day to day fiscal operations sufficient to meet deadlines but lacked follow through and continued to have less than accurate attention to detail. Your fourth fitness report evaluation on 12 October 1982 was issued by a new reporting senior and reviewing officer. This report noted your improved

attention to detail and recommended you for promotion. Despite these issues, you were promoted to the paygrade of sergeant / E-5 during this period.

However, on 10 March 1983, you were issued administrative counseling advising you to correct deficiencies with respect to your attention to duty and your performance of tasks related to your billet. Shortly thereafter, on 31 March 1983, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) for a violation of Article 92 after willfully disobeying an order from a commissioned officer to clean the supply warehouse, to include emptying the trash cans. However, you were only issued a verbal reprimand.

Subsequent administrative counseling in your record indicates that you continued to experience difficulties in satisfactorily performing your duties; specifically, your commanding officer advised you that he was not recommending you for reenlistment and was assigning you an "RE-4" reentry code due to your inability to perform satisfactorily as a mature Marine. He documented this notification in an administrative counseling entry dated 15 September 1983 and further advised that your inadequacies precluded you from further service. You indicated a desire to submit a statement in response to this counseling entry, which you submitted on 14 October 1983. In relevant part, you contested the assessment of your maturity and stated your belief that you were unable to accomplish your fullest potential at the current duty station. Your statement indicates your desire to receive a transfer to another duty assignment; although there is no indication of your having submitted such request in your official military personnel file (OMPF). Nearly five months following the notification regarding your reentry code, you received NJP, on 6 February 1984, for an alleged violation of Article 91 of the UCMJ. Specifically, you were accused of willfully disobeying a lawful verbal order issued by your Sergeant Major to keep the training center open until the duty sergeant returned from a driving commitment. You were reduced to the paygrade of corporal / E-4 but appealed this NJP.

In your appeal, you asserted that the NJP and your demotion were illegal because the Sergeant Major's verbal order conflicted with existing guard orders. You stated that under Guard Order 1601.3, you were responsible to secure the gate at 1730 whereas the Duty Noncommissioned Officer (NCO), who also happened to be the person returning from a driving commitment, was responsible to remain onboard until 1730 to secure the center. You alleged that, because there had not been a supernumerary assigned to cover the Duty NCO's absence, as required by Guard Order 1601.2, that the Sergeant Major had essentially turned you into a scapegoat for his own mistake. You also asserted that it was unlawful for the Sergeant Major to issue a verbal order that conflicted with the written Guard Orders.

In forwarding your appeal on 9 February 1984, your commanding officer submitted a rebuttal to your statement. He clarified that the order to keep the center open had been issued to cover a specific situation; of which you were aware at the time the order was issued. He also asserted that, after you had been told that you were issued a lawful order which you willfully disobeyed, you pleaded guilty at NJP rather than demanding to exercise your right to trial by court-martial. Ultimately, the reviewing authority concurred with your Commanding Officer and your appeal was denied. You submitted an emergency Request Mast regarding your NJP and appeal, again asserting that you had been unfairly punished and demoted for disobeying a lawful order when, in reality, you had disobeyed an unlawful order and had followed the lawful, written order governing your duty assignment. Additionally, you filed an official complaint, which was also documented in your OMPF. You continued serving the remainder of your obligated service

without further incident and you were honorably discharged by reason of expiration of enlistment, on 15 June 1984, with 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 to change your reentry code to "RE-1" and "correct" your rank to sergeant / E-5. You contend that your NJP and resulting reduction in rank were a material error because you were issued a verbal order that contradicted a written Guard Order. In support of this contention and for the purpose of clemency and equity consideration, you submitted a detailed personal statement and evidence of post-service accomplishment to include your résumés, academic records to include your diploma, transcripts, and awards, and a favorable employment performance review.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that you were properly reduced in paygrade to E-4 and assigned a RE-4 reentry code upon your discharge. First, because you were advised by your commanding officer that you were not recommended for reenlistment and would be assigned an "RE-4" reentry code more than four months prior to the NJP which resulted in your reduction to the paygrade of corporal, the Board found that the assignment of your reentry code was not dependent upon your second NJP. Therefore, the Board reviewed this request for relief independently of your request to reinstate your rank to the paygrade of sergeant.

The Board noted that you received multiple fitness report evaluations, from multiple reporting seniors and reviewing officers, which all documented reasonable concerns regarding your lack of attention to detail, lack of initiative, and abnormal need for close supervision in your independent duty assignment. You were issued corrective administrative counseling, in March 1983, advising you to correct your deficiencies with respect to your performance of occupational tasks associated with your billet and to pay more attention to your duties. Nearly six months later, after your apparent failure to effectively adjust to correct these deficiencies, your commanding officer advised you that your inadequacies precluded further service and determined that you were unable to perform satisfactorily as a mature Marine. The Board observed that, although you appeared to have excelled as a young NCO while working under routine supervision within your occupational field, your record reflects that, following your reenlistment, promotion, and assignment to independent duty, you struggled to perform without the normal occupational supervisory chain. With the addition of the fiscal accounting duties required of your position, your fitness reports clearly document your inability to successfully adapt to your new responsibilities. Although your evaluations reflect that you were eventually able to learn how to adequately complete your required fiscal duties, you continued to require a level of supervision not expected for a NCO, especially in the paygrade of sergeant, operating in an independent duty position. Although this assignment should have provided you with an opportunity to flourish and demonstrate your independent capabilities, it instead revealed your inability to accomplish your mission without close supervision and guidance. As a result, your commanding officer found that your inadequacies were largely due to lack of sufficient maturity expected of a sergeant who, if you were allowed to reenlist, would be doing so with the intention and hope of trying to promote to staff sergeant. Your commanding officer clearly found that your deficiencies were such that you would not be successful in positions of continued and increasing responsibility, and the Board declined to overturn his professional assessment as your commanding officer. Additionally, the Board observed that his predecessor had expressed

similar concerns in your fitness report evaluations. As a result, the Board concluded that the problems with your performance were attributable to your own deficiencies and that the assignment of your "RE-4" reentry code was neither erroneous nor unjust.

With respect to your reduction in grade to E-4, the Board observed that you made consistent assertions regarding the verbal order of the Sergeant Major contradicting the written Guard Orders at the time of the incident and in your application to the Board. The Board observed that, in spite of your submission of that argument as part of your appeal, the appeal authority did not find it compelling when weighed against your Commanding Officer's rebuttal and your acceptance of NJP. The Board noted that you were properly advised of your right to refuse NJP and demand trial by court-martial. In the regard, the Board found that, had you been thoroughly convinced of the unlawfulness of the order, you should have refused NJP and pursued the legal matter before a court of competent jurisdiction. Instead, you elected to waive that right, accept NJP, and plead guilty to the charged offense. Absent direct evidence in the written orders which, if available, might potentially confirm whether the Sergeant Major's verbal order did, as you allege, constitute an unlawful order in conflict with the written Guard Orders, the Board declined to speculate as to the contents of such orders. Rather, the Board relied on a presumption of regularity that the military officials involved in reviewing your appeal of your NJP took your allegations into consideration, reviewed the applicable orders at that time, and concluded that the verbal order was, in fact, lawful.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, 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 the 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 is attached 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,

3/24/2025

