



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

██████████
Docket No. 8420-24

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 8 November 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 19 April 1990. Your pre-enlistment physical examination, on 13 October 1989, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 6 March 1991, your command issued you a "Page 11" retention warning (Page 11) documenting your substandard performance of duty, lack of self-discipline and motivation. The Page 11 expressly advised you that a failure to take corrective action may result in disciplinary measures, administrative separation or limitations on further service. You elected not to submit a Page 11 rebuttal statement.

On 11 May 1991, your command issued you a Page 11 documenting your failure to obey orders, lack of attention to detail, and general lackadaisical attitude resulting in below average performance and conduct. The Page 11 expressly advised you that a failure to take corrective action may result in disciplinary measures, administrative separation or limitations on further service. You again elected not to submit a Page 11 rebuttal statement.

On 12 September 1991, you received non-judicial punishment (NJP) for the violation of a lawful order. You did not appeal your NJP.

On 22 December 1992, your command issued you a Page 11 documenting your repeated tardiness. On 3 February 1993, your command issued you a Page 11 documenting your failure to pay a just debt and poor financial management.

On 14 February 1993, you commenced an unauthorized absence (UA). On 14 March 1993, your command declared you to be a deserter. Your UA terminated with your arrest by civilian authorities in ██████████ on 16 August 1995.

On 18 September 1995, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) in lieu of trial by court-martial for your 913-day UA offense. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged guilt of your UA offense, and also acknowledged that if your request was approved, your characterization of service will be OTH.

Your separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 29 September 1995, the Staff Judge Advocate to the Separation Authority (SA) concurred with the recommendation by your commanding officer to approve your discharge request. On 17 October 1995, the Separation Authority approved your voluntary discharge request for the good of the service in lieu of trial by court-martial. Ultimately, on 17 October 1995, you were separated from the Marine Corps in lieu of a trial by court-martial 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 change to your reason for separation. You contend that: (a) you ran into trouble in your personal life that began to affect your service when you became aware that your children were being abused and neglected at home with their mother, (b) trying to navigate gaining custody of your children, your mother was then diagnosed with congestive heart failure and unable to fully care for herself without your help, (c) at this time, you were informed you were assigned for deployment in ██████████ (d) unable to be so far apart from your family, you requested a humanitarian discharge, which was not

granted, (e) at such time, you went AWOL in order to care for your family, (e) your chain of command (COC) made an error of discretion when they chose to not consider your request for a Hardship discharge, and further erred when they ignored the evidence of your hardship and denied your discharge request, (f) at such time your family was existing in a condition of undue hardship far beyond the inconveniences normally incident to absence of a member in military service, (g) your COC ignored the reckless endangerment of your children when they refused to grant your hardship discharge, and (h) you have changed your life and have been an outstanding support system for his family, and you respectfully request that your tarnished record from over twenty-five (25) years ago not continue to reflect on the man you are now. 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 of service 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 simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse for 913 days. 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.

The Board determined that your contention regarding not receiving any humanitarian discharge was not persuasive. The Board observed that your record did not reflect any humanitarian discharge request and, in your petition and supporting documentation, you only made a passing reference to a purported humanitarian transfer request, and not for a discharge request.¹

Finally, the Board considered that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and 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, 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

¹ In your unsworn written personal statement accompanying your voluntary discharge request, you stated, in part, the following: "I asked for a humanitarian transfer but I didn't receive one. [m]y problems got the best of me and I went U.A."

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,

11/24/2024

