



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. 8812-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 December 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Reserve with a moral waiver and began a period of active duty on 2 July 1990. On 29 December 1990, you were honorably discharged by reason of completion of required active duty service training and assigned to your Reserve unit.

On 29 December 1992, you were reduced in rank for missing a scheduled drill. Between 16 May 1993 to 25 September 1994, you were not recommended for promotion as a result of missing numerous mandatory reserve drills. During this period, on 19 April 1994, you were notified of the initiation of administrative separation proceedings by reason of unsatisfactory participation in the Marine Corps Reserves. On 10 June 1994, you decided to waive your procedural rights and

your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of unsatisfactory participation in the Marine Corps Reserves. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved the recommendation and you were so discharged on 30 January 1995.

On 3 December 2008, this Board denied your previous request for a change to your 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) you were forced out of the Marine Corps because you followed orders without questions, (b) you were not provided any counsel before given a paper a paper to sign which was not explained to you nor you were aware of the ramifications the document, (c) while on MCI school, you received meritorious mast and was one of the top recruits in your class, and (d) you accept full responsibility for your actions. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, certificate of license, certificate of ordination, two college diplomas, letter of recognition, three certificates of recognition, and four character letters of support.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unsatisfactory participation in the Marine Corps Reserves, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board observed that you provided no evidence, other than your statement, to substantiate your contention that you were wrongfully forced out of the Marine Corps. Additionally, the Board observed that you voluntarily waived your right to consult with legal counsel. In your acknowledgement of rights form, you signed your initials by the entry, "I have not consulted with counsel. I understand it is in my best interest to do so prior to exercising or waiving any of my rights." Therefore, the Board determined you were appropriately counseled on your right to legal counsel and warned not to waive your rights prior to consulting with one. Consequently, the Board was not persuaded by your claim of denial of due process and determined the presumption of regularity applies in your administrative separation processing. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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. 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. 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 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 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,

1/16/2025

