



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. 9522-24
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 15 August 1995. On 28 March 1996, you were subject to nonjudicial punishment for a violation of Articles 81 and 121 of the Uniform Code of Military Justice for conspiracy related to theft of the property of a junior enlisted Marine and for theft of electronics, headphone, and compact discs. On 14 November 1996, you were issued administrative counseling advising you to correct conduct deficiencies after you overslept and had to be awakened by a staff noncommissioned officer. Additionally, you had been instructed to report to the armory but, even 25 minutes later, you were still not ready; which resulted in you being dropped from the firing range detail after you failed to check out a weapon in time. From May 1997 through September 1997, you were advised repeatedly that you were not recommended for promotion due to your lack of maturity and your continued misconduct, to include financial irresponsibility and additional absences.

On 29 May 1998, you were advised of your assignment to weight control. In August 1998, you were counseled to correct your continued conduct deficiencies; specifically, you continued to show up late even though you had received multiple written and verbal counseling sessions with members at multiple levels within your chain of command. Your response to this counseling was that your oversleeping was the result of your civilian job.

On 16 October 1998, you then accepted a second NJP for multiple violations of the UCMJ including Articles 86, 107, and 134 of the UCMJ due to absence from your official place of duty, making a false official statement with intent to deceive that you were at the hospital with a lance corporal whose wife was having a diabetic attack, and wrongfully soliciting for that same lance corporal to make a false official statement that he had transported you to the hospital. On 13 April 1999, you received a third NJP for violation of the UCMJ after disobeying the Marine Corps Order governing uniform regulations by wrongfully having your tongue pierced. You were also counseled in June 1999 regarding your failure to meet weight standards and your assignment to a final period of remedial weight control prior to being advised that you were being processed for administrative separation by reason of misconduct due to minor disciplinary infractions.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Marine Corps on 28 June 1999, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation is "Invol dis (Board Waived)(Miscon)," reenlistment code of "RE-4," and your separation code of "HKN1;" which indicates misconduct due to minor infractions.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you desired veteran benefits and that your discharge characterization was too harsh in proportion to your misconduct. Your request was considered on 9 November 2012 and denied; noting that you had committed multiple violations of the conduct standards expected of a Marine.

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 upgrade your discharge to "Honorable" and change your narrative reason for separation to "Secretarial Authority." You contend that you have endured life-long prejudice as a result of your OTH characterization of service. You believe that your post-discharge character and accomplishments warrant consideration of an upgraded discharge characterization on the basis of clemency in contrast to the minor nature of your in-service disciplinary infractions. Additionally, you attributed the decline in your performance to having been falsely accused of theft by your roommate; which you further allege resulted in your being coerced into signing a false admission to military police. You further allege your innocence in that you claim your roommate lied about being late; which you purport was attributed to you due to your seniority in rank. You attribute your weight gain to sleep apnea and believe the medical professionals should have properly investigated your condition when you reported sleeping issues. However, you admit to the improper piercing and acknowledge that it not only violated uniform regulations but also was an immature mistake. In

support of your contentions and for the purpose of clemency and equity consideration, you submitted a personal statement, a statement from your spouse, several character letters, your service records, and your résumé.

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 NJPs and multiple counselings, 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. The Board noted you provided no evidence, other than your statement, to substantiate your contentions of unfair treatment. Therefore, the Board was not persuaded by your arguments and determined the presumption of regularity applies in your case.

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 and 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 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 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,

3/25/2025

