



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

Docket No. 9621-24  
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 21 January 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 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 commenced active duty on 10 August 1987. On 31 December 1987, you received non-judicial punishment (NJP) for unauthorized absence (UA) from your place of duty. On 20 June 1988, you commenced a period of UA that ended in your surrender on 28 July 1988. On 1 August 1988, you were found guilty at Summary Court Martial (SCM) of thirty-six days of UA. On 25 October 1988, you commenced another period of UA that ended in your surrender on 10 January 1989.

On 21 March 1989, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the period of UA. Prior to submitting this 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. Your request was granted, and your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 5 May 1989, 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 your sister was killed on 16 April 1989, you were granted

emergency leave, you remained with your family in a UA status to protect them until the perpetrator was apprehended, and you returned to base once the situation was resolved. 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 request for separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated UAs had on the good order and discipline of your command. 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 request for an undesirable discharge to avoid trial for your offenses. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and 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. Finally, the Board further noted that your service record and your statement both indicate you took emergency leave in April 1989; which was four months after you returned from the ninety-two-day UA period that formed the basis for your OTH discharge. Therefore, the Board was not persuaded by your mitigation evidence.

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. 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,

2/14/2025

