



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

[REDACTED]
Docket No. 9900-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 24 January 2025, has carefully examined your current request. 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 previously applied to this Board on several occasions. Your applications were considered and reconsidered on 12 July 2006 and 3 February 2023. Following your initial request in 2006, you initially sought reconsideration that same year and again in 2007; however, both requests were denied without a hearing due to a lack of any new, material evidence for consideration. Additional requests for reconsideration, were again denied for lack of new material evidence and for expiration of the statute of limitations.

In your initial request to the Board, you attributed your unauthorized absence to family hardship resulting from your discovery of past-due bills and eviction notices upon your return home during post-boot camp leave. You stated that you had to work to make money to help pay the bills, which had previously been your responsibility for your family, and to assist your mother in finding a job. With respect to those contentions, the Board noted that a report of inmate data, documented during your confinement, contradicted your contention and stated that you had a poor relationship with your family, had not seen them in a few years, and did not get along with your mother. At that time, you sought relief in the form of an entry-level separation; arguing that

the brevity of your actual days of service prior to your absence, confinement, and appellate leave, had not warranted being characterized. However, your request was denied since the Board when the Board declined to render a characterized discharge to have been uncharacterized.

Similarly, in your reconsideration request, you sought to have your punitive discharge upgraded to a discharge under Other Than Honorable conditions. Your request was again denied.

In your third review by the Board, you contended that your reentry code should have been "RE-3F" due to your purported failure to complete recruit training and that your separation code of "JJD2" was incorrect. However, the Board found no evidence of error with respect to the assignment of a separation code which reflected your punitive discharge as a result of sentence by court-martial. Further, the Board determined your BCD was appropriately accompanied by an "RE-4" reentry code.

In your most recent review by the Board, you requested that your discharge be upgraded and that your "character of service code" be expunged. You sought reconsideration on the basis of clemency with respect to your recent Honorable service in the Air National Guard (NG); to include recognition via awards including a volunteer service medal and evidence of your volunteer efforts with youth sports and scouting. The review of your request resulted in a split vote; which required higher level review by the Assistant General Counsel of the Navy (AGC). The AGC concurred with the Board's Minority opinion that the favorable factors in support of your clemency were insufficient to overcome the brevity of your service weighed against the length of your absence; notwithstanding your subsequent service in the Air NG. Additionally, the Minority noted that you provided no evidence that the Air NG had permitted your enlistment via a waiver after a review of your punitive discharge and restrictive reentry code. They determined the more likely conclusion, absent evidence to the contrary, was that you gained entry to the Air NG, via fraudulent entry, without disclosing your prior punitive discharge.

The summary of your active duty service and the circumstances of the misconduct which resulted in your punitive discharge remains substantially unchanged from that addressed in the Board's previous decisions regarding your request for an upgraded characterization of service.

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 separation code and narrative reason for separation, to "JFF1" / "Secretarial Authority." You contend that it would be in the best interest of the service to make this change on clemency grounds because you have grown and matured in the 20 years since your punitive discharge from the Marine Corps. You disagree with the position of the Board's Minority opinion with respect to your absence; arguing that your current service in the Air NG is evidence that you would have returned to the Marine Corps of your own accord if you had not been apprehended. Additionally, you believe that your service in the Air NG reflects your desire to make up for your misconduct by serving your country in another branch of service.

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 special court-martial, 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. Additionally, in spite of convincing evidence that you have been, and are, successfully serving in the Air NG, given that you have previously expressed a desire to upgrade your discharge to permit you to commission as an officer, the Board found the absence of evidence regarding your proper entry into the Air NG to be particularly concerning. Further, the Board concurred with the previous position expressed by the Minority, and affirmed by the AGC, in the Board's most recent decision. In light of the brevity of your service in the Marine Corps, the length of your unauthorized absence and apprehension by authorities, and the lack of evidence that the Air NG granted a waiver for your enlistment in spite of your punitive discharge and RE-4 reentry code, the Board determined no change to your record is merited.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

2/26/2025

