



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

Docket No. 10801-24
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 16 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, 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 Reserves on 18 October 2004 and commenced initial active duty for training (IADT) on 23 May 2005. On 20 August 2005, you completed IADT and commenced continued participation in the Ready Reserve; requiring forty-eight drills and fourteen days of active duty per year. You had a satisfactory year on your first anniversary of 17 October 2005 and you regularly attended drills from 18 October 2005 to 4 June 2006. After not attending drills for the rest of June and all of July and August 2006, you regularly attended drills from 8 September 2006 to 15 October 2006 and completed a satisfactory year. You then attended drill on 11 November 2006, 9 December 2006, 15 December 2006, 9 January 2007, and 3 and 4 February 2007. On 4 February 2007, you were issued an administrative remarks (Page

11) counseling, for which you were unavailable for signature, concerning deficiencies in your performance and/or conduct; specifically for unauthorized absence (UA) for missing drill on 10 January 2007. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 14 April 2007, you received Page 11 counseling, for which you were unavailable for signature, for UA on 3 and 4 March 2007 and were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Your command also made attempts to contact you by phone but were unable to reach you and you did not report for any subsequent drills for the remainder of your time in service. On 23 April 2007, via certified mail, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of unsatisfactory participation in the Ready reserve due to nine or more [unexcused] missed drills. You chose not to respond to the notice of pending separation processing; an action that constructively waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on or about 9 November 2007.

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 you and a couple of friends were assaulted in 2006 and you missed drills while your jaw was wired shut for six months. For purposes of clemency and equity consideration, the Board considered your statement, the police report, and surgery notes you provided; however, it noted you did not provide documentation of post-service accomplishment 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 repeated UA from required drill, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board noted that you provided a police report and surgery notes that indicate the assault occurred 24 June 2006 and resulted in mandible fractures “fixed with plates and screws.” The Board also noted that you resumed regular drilling in early September 2006, approximately two months following the assault, and that your UA from drill began in early January of 2007, approximately six months after the assault. The Board further noted that you did not return to your command nor respond to your command’s attempts to contact you; which would have been your opportunity to request accommodation if you had been experiencing additional medical complications.

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 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

