



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

██████████
Docket No. 10886-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 7 March 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).

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 originally enlisted in the U.S. Marine Corps and began a period of active duty service on 19 September 1990. Your pre-enlistment physical examination on, 8 January 1990, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms.

On 23 April 1992, your command issued you a "Page 11" retention warning (Page 11) documenting your poor judgment and disloyalty. The Page 11 expressly advised you that a

failure to take certain action could result in non-judicial punishment, administrative separation under Other Than Honorable conditions (OTH), or trial by court-martial. You elected not to submit a Page 11 rebuttal statement.

On 5 October 1992, you signed a Memorandum of Agreement (MOA) where you agreed to waive your right to elect a hearing before an administrative separation board in return for accepting a Summary Court-Martial (SCM) in lieu of a Special or General Court-Martial. On 8 October 1992, pursuant to your guilty pleas, you were convicted at a SCM of: (a) three (3) separate specifications of larceny, and (b) housebreaking. The charges stemmed from your unlawful entry into a fellow Marine's BEQ room on 9 August 1992, the theft of two (2) ATM cards, and their subsequent use by you to obtain cash. The SCM sentenced you to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement for thirty (30) days. On 15 October 1992, the Convening Authority approved the SCM sentence as adjudged, except suspended certain forfeitures of pay in excess of \$523/month, and changed the findings of guilty of the housebreaking offense to the lesser included offense of unlawful entry.

On 14 December 1992, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You consulted with counsel, elected your right to submit a statement to the Separation Authority (SA), and waived your right to request an administrative separation board.

On 9 February 1993, the Staff Judge Advocate to the SA determined that your separation proceedings were legally and factually sufficient. On 26 February 1993, your command issued you a Page 11 documenting your poor judgment by being late for work on several occasions and not notifying your chain of command. You elected not to submit a Page 11 rebuttal statement.

On 9 March 1993, the SA approved and directed your OTH discharge for misconduct due to the commission of a serious offense. Ultimately, on 19 March 1993, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

On 3 January 1995, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. You had contended, in part, that the charges against you were based on a misunderstanding with another Marine and the problem was resolved. The NDRB, however, concluded they were not convinced of the veracity of such statement, and noted that you did not submit any documentary evidence to support your contention.

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) the offense you were found guilty of causing your separation was an honest mistake, (b) a Marine allowed you to use his debit and ATM cards, and (c) having your service record corrected would help you possibly get housing, and take advantage of the G.I. Bill and other benefits. For purposes of clemency and equity consideration, the Board considered the totality of the documentation you provided in support of your application; which consisted solely of what you stated on your DD Form 149 and a copy of your DD Form 214.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board unequivocally concluded that your SCM was legally and factually sufficient and that no error materially prejudicial to your substantial rights was committed. The Board determined that you did not provide credible and/or convincing evidence to substantiate or corroborate your evidentiary and factual sufficiency contentions regarding your SCM offenses. The Board determined the evidence you provided was insufficient to overcome the presumption of regularity. Instead, the Board determined that you were found guilty of your extremely serious SCM offenses because you were guilty beyond a reasonable doubt and was not willing to re-litigate well-settled facts that are no longer in dispute from a final SCM conviction occurring over thirty-two (32) years ago. Moreover, the Board noted that you pleaded guilty to your charged SCM offenses. The Board further noted that a plea of guilty is the strongest form of proof known to the law, and based upon your plea of guilty alone and without receiving any evidence in the case, a court-martial can find you guilty of the offenses to which you pleaded guilty. The Board concluded that you knowingly and voluntarily pleaded guilty to such offenses because you were indeed guilty.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

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 determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious 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,

3/24/2025

