



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

██████████  
Docket No. 11112-24  
Ref: Signature Date

████████████████████  
████████████████  
████████████████████

Dear ██████████

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 6 February 2025. The names and votes of the members of the panel 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 this 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).

A review of your record shows you enlisted in the Marine Corps and commenced active duty on 27 April 1989.

On 25 October 1989, you were counseled after a period of unauthorized absence (UA). Later, on 10 November 1989, nonjudicial punishment (NJP) was imposed after you were found guilty of failure to go at the prescribed time and disobeying a lawful written order. You were awarded reduction to E-1 and forfeiture of pay, which was suspended, but later vacated on 8 December 1989.

On 2 April 1991, you were counseled concerning your financial irresponsibility after writing checks without sufficient funds.

On 15 January 1992, NJP was imposed for an UA period and you were awarded reduction to E-2, forfeiture of pay, and ten days of extra duties. The reduction and forfeiture were suspended but subsequently, on 6 February 1992, vacated.

On 15 January 1992, you were counseled after failing to comply with verbal instructions, written orders and regulations and failing to be at your appointed place of duty at the prescribed time.

The next day, on 16 January 1992, you were turned over to and charged by [REDACTED] Authorities but subsequently released on 19 January.

On 31 January 1992, you were counseled regarding your frequent involvement with civilian authorities after a second domestic disturbance requiring civilian law enforcement officials presence at your home. You were also counseled for not paying a speeding ticket until your command had been contacted a third time by civilian authorities.

On 4 February 1992, a Medical Evaluation Board diagnosed you with asthma and referred you to a Physical Evaluation Board (PEB).

However, on 26 February 1992, an informal inquiry was conducted to determine your fitness for retention or discharge. Based on the misconduct noted above, you were recommended for administrative separation (ADSEP) processing due to your demonstrated "continued trend of disciplinary infractions" that had "continued despite counseling and supervision." On 27 February 1992, your command notified you of ADSEP processing and, after consulting with counsel, you requested an administrative discharge board (ADB) hearing.

On 12 March 1992, a PEB Record Review Panel found you unfit for duty based on your asthma with a 10% disability rating which allowed for separation from naval service with severance pay but without further disability benefits.

On 9 April 1992, the ADB determined the preponderance of the evidence supported findings of minor disciplinary infractions and pattern of misconduct. The ADB recommended separation with an under other than honorable conditions characterization. A review of your testimony at the ADB indicates you testified that your "medical discharge board went through and came back. It's on legal hold now. It recommended that [you] be discharged from the Marine Corps..."

By his endorsement of 6 May 1992, Commanding Officer (CO), [REDACTED] ) [REDACTED] concurred with the ADB's findings and recommendations. The [REDACTED] Staff Judge Advocate (SJA) further endorsed the ADB findings and recommendations as "sufficient in law and fact." On 15 May 1992, Commanding General (CG), [REDACTED], approved the ADB's recommendation and directed your separation by reason of misconduct due to a pattern of misconduct with an under Other Than Honorable conditions characterization. On 22 May 1992, 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 for a correction of your rank from private to lance

corporal; upgrade of your characterization to Honorable; and a “medical discharge and disability.” In support of your request, you submitted a short statement and a copy of your Report of Medical Board which diagnosed you with asthma, moderate, DNEPTE and recommended referral to the PEB. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In reaching its decision, the Board observed that it 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. In your case, the available records demonstrate that, with respect to your discharge, you availed yourself of substantial rights, including those of an assigned legal counsel and to be heard at an administrative board.

Further, with respect to your request for a “medical discharge and disability,” the Board noted that in many circumstances, including yours, administrative separation processing for misconduct takes precedence over disability processing. In your case, the proximate reason for your discharge was due to your misconduct, as evidenced by the imposition of NJP on two occasions and frequent involvement with civilian authorities, and the recommendation of an ADB. This ADSEP processing for misconduct took precedence over your disability processing.

Additionally, with respect to your request for correction of your rank and upgrade of your characterization, the Board again noted you have provided insufficient evidence to overcome the presumption of regularity that has attached to your command’s actions in reducing your rank at NJP and in the ADB, CO, and SJA recommendations for and the CG’s decision to characterize your service as under OTH conditions. 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. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

Lastly, the Board, noting you indicated “Reprisal/Whistleblower” in block 14 of the DD Form 149 and stated in block 15 that you had “endured retaliation” but provided no discussion of or evidence in support of reprisal, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy’s (SECNAV’s) decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the SECNAV acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal.

You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

2/27/2025

