



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

██████████
Docket No. 11133-24
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 14 February 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 U.S. Marine Corps Reserve (USMCR) on or about 20 December 1976. As part of your enlistment application, you signed and acknowledged the "Statement of Understanding Upon Enlistment in the Special Enlistment Program in the Marine Corps Reserve" (SOU). The SOU informed and expressly advised you, and you understood and acknowledged that, including, but not limited to: (a) satisfactory participation consists of attendance at and satisfactory performance of 48 scheduled drill periods, and not less than 14 days (exclusive of travel time) of Active Duty Training (ADT) during each year of your contract, (b) you would be required to attend drills and ADT periods as prescribed, and understood that failure to do so may result in your being ordered to active duty by the Commandant of the Marine Corps for a period of two (2) years less any period of active duty or

active duty for training you may have already served, (c) while in a drill unit status you would not be excused from active duty for training for the purpose of attending college, and (d) understood that you must keep your commanding officer informed of your current address at all times.

You commenced Marine Corps initial recruit training on 28 September 1977 and were honorably discharged at the completion of your required active service on 8 February 1978. Upon your discharge, you were initially assigned to a drilling USMCR unit located at ██████████; approximately a thirty-eight (38) mile driving distance from your listed home of record address of ██████████, ██████████.

On 21 October 1979, your command documented in your service record a letter sent to you concerning your reduction in rank to the lowest enlisted paygrade (E-1) for your unsatisfactory performance of Reserve training. A follow-up notation in your record, dated 31 October 1979, indicated the unsatisfactory performance letter was signed for by your next-of-kin. For the period ending calendar year 1979, a notation on your Form NAVMC 118 (Markings Page (1070)) indicated that you completed only nine (9) of forty-nine (49) drills.

On 20 January 1980, your command notified you that you were being processed for an administrative discharge (Adsep) by reason of misconduct due to shirking. The notification advised you that a failure to respond to the letter of notification, even if the letter was receipted for by persons other than yourself, will be considered as a waiver your rights to have your case considered by an Adsep board and all rights attendant thereto. You were directed to respond in writing to the notification not later than twenty (20) days from your receipt. Your command mailed your notification of separation proceedings and your election of rights forms via U.S. Certified Mail to your last known address that you provided to your command. Your command provided you a pre-addressed, postage and fees paid envelope for your convenience to return your reply.

In the interim, on 21 January 1980, you were administratively reduced in rank to the lowest enlisted paygrade (E-1) per MCO P1400.29B, paragraph 4013.1b, due to the shirking of your drills.

You did not complete and/or return the Adsep acknowledgement of rights form to your command; thus, effectively waiving your rights in connection with the Adsep. On 23 February 1980, your commanding officer (CO) recommended to the Separation Authority (SA) that you receive an under other than honorable conditions (OTH) characterization of service by reason of misconduct due to shirking. The CO specifically stated, in part:

The subject Marine has established a pattern of repetitive absenteeism from scheduled drills as evidenced by enclosure (1) ["IDART's"]. After each drill the subject Marine was personally contacted concerning his absences and where personal contact was not possible, a letter was sent directing him report to the training center for interview concerning his absences. These attempts to induce the subject Marine to regain satisfactory participation status, however, have failed."

Since it was obvious that the subject Marine intended to avoid all the responsibilities of his military obligation, enclosure (3) [CO ltr DIV:gsg 1900 of 20 January 1980] was mailed to the subject Marine advising him of this command's intended discharge action. The receipt from postal authorities for enclosure (3) is contained in enclosure (4). The subject Marine did not respond to enclosure (3).

On 22 May 1980, the Staff Judge Advocate to the SA determined your administrative separation was legally and factually sufficient. On 29 May 1980, the SA approved and directed your under Other Than Honorable conditions (OTH) discharge characterization for misconduct premised on an established pattern of shirking. Ultimately, on or about 20 June 1980, you were discharged from the USMCR for misconduct with an OTH discharge characterization.

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 change to your reason for separation. You contend that: (a) you did not know your unit recommended your separation and with a negative characterization until 2023, (b) your time in the Marine Corps and civilian world is marked with exceptional service, impressive accomplishments, and genuine sacrifice, and you respectfully request that your discharge is upgraded to reflect your lifetime of accomplishments and his dedication to service, (c) you became aware that you did not have an Honorable discharge after applying for a Department of Veterans Affairs home loan, (d) your OTH was due to missing USMCR drill weekends and annual training, but you did not know your absences were being recorded as unauthorized absences, (e) you did not have a discharge board of any kind, nor did you receive notice that you were being separated from the USMCR, (f) your chain of command committed a material error designating you with an OTH without informing you of this designation, nor information you that you were missing obligations required of you, (g) you worked in government positions throughout your life and worked alongside service members after graduating from aviation and aviation technology schools, and you were under the impression that these did not affect his USMCR obligations, and (h) you believed that because you were working within the Department of Defense that your duty status would be reported to your USMCR unit and that their records would indicate that you were fulfilling his obligations. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not otherwise believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The simple fact remained is that you failed to attend certain regularly scheduled weekend drills while you were still contractually obligated to serve without any legal justification or excuse, and that your cumulative absences deemed you an unsatisfactory participant in the USMCR. 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.

The Board was not persuaded by your contentions regarding your ignorance of your Reserve service requirements. The Board determined that plain language of the SOU outlining your annual drill and ADT requirements were unambiguous and left nothing to interpretation. The SOU terms were clear on its face and did not otherwise require the Board to look beyond the four corners of the document in order to determine what your contractual USMCR obligations were. The SOU does not provide for any alternative civilian service with the Department of Defense or any other federal agency as a substitute for, or fulfillment of, your USMCR obligations, and the Board felt it was unreasonable at any time during your USMCR enlistment contract for you to assume otherwise. Moreover, interpreting the SOU otherwise as you suggest would lead to a decision incongruent with the facts and evidence that are actually in the record.

The Board was also not persuaded by your denial of due process contentions based on lack of notice of your proposed administrative separation. The Board noted that the record clearly indicates that your command mailed you notice via U.S. Certified Mail to your home of record and that you did not respond with your rights elections in a timely fashion, which thus acted as a waiver of your rights.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall trait average calculated from your available performance evaluations during your USMCR enlistment was approximately 2.543 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your substandard performance of duty and shirking of your USMCR responsibilities which further justified your OTH discharge characterization.

Finally, absent a material error or injustice, the Board declined to summarily grant your request solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. The Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in 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. 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,

3/6/2025

