



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

[REDACTED]
Docket No. 11542-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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).

You enlisted in the U.S. Marine Corps and began a period of active duty service on 10 November 1987. Your pre-enlistment physical examination on, 7 May 1987, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms.

On 31 August 1990, you commenced a period of unauthorized absence (UA). Your command subsequently declared you to be a deserter and dropped you from the rolls.

On 13 May 1992, you were convicted in the [REDACTED], of assault in the first degree. You were sentenced to a minimum term of confinement of three and half (3.5)

years and a maximum term of ten (10) years.

As documented on your DD Form 214, your UA terminated on or about 21 June 1994; a period of approximately 1,390 days. On 20 August 1994, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. On or about 31 August 1994, you waived your rights to consult with counsel and to request an administrative separation board.

On 13 September 1994, the Staff Judge Advocate to the Separation Authority (SA) determined that your separation proceedings were legally and factually sufficient. On 14 September 1994, the SA approved and directed your discharge with an under Other Than Honorable conditions (OTH) characterization. Ultimately, on 16 September 1994, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 would like to take this opportunity to apologize to this Honorable Board and the Marine Corps as a whole for your misconduct, (b) you are filled with remorse and shame for how your Marine Corps service came to such an abrupt end, (c) while you were on leave, an individual confronted you, put a gun in your face and fired the weapon, but fortunately, the gun misfired; you got away, but you subsequently armed yourself and shot this person, (d) your civilian period of incarceration led to you being UA from your unit and your eventual separation from the Marine Corps, (e) the punitive intent of your confinement served any legitimate purpose it may have had in correcting your behavior, (f) not only did you have your Marine Corps service stripped away from you, you had your freedom temporarily taken away as well, (g) since your release from prison, you have worked tremendously hard to overcome the hardships of your life, (h) you have been deprived of your honor and good name, which continues to cause you undue hard nearly thirty years after your discharge, (i) you are repentant about your misconduct during your time as a Marine and still speak proudly of your military service; but you are haunted by your OTH discharge and it will continue to burden you and your family until it is corrected, and (j) you were properly punished at the time for your misconduct and you have been more than punished for your actions. 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 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.

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 active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.584 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 egregious misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

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

3/24/2025

