




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


Docket No. 12109-24
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 May 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 16 February 2007. As part of your USMCR enlistment application, you signed and acknowledged the "Statement of Understanding Upon Enlistment in the Marine Corps Reserve Optional Enlistment Program" (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 and phone number at all times. The SOU clearly states that the SOU will become an attachment to your enlistment contract and that your SOU and your Marine Corps application constituted the entirety of your enlistment agreement with the Marine Corps.

You commenced Marine Corps initial recruit training on 22 February 2007 and were honorably discharged at the completion of your required active service on 3 August 2007. Upon your discharge, you were initially assigned to a drilling USMCR unit located at ██████████, approximately a 166 mile driving distance from your initial home of record address of ██████████. You subsequently mobilized in support of ██████████ and were honorably discharged on 28 May 2008.

Beginning in October 2008 and continuing through April 2009, your command documented in your service record your multiple unauthorized absences (UA) from scheduled weekend drills. On 9 May 2009, your command sent an "Unsatisfactory Participation Letter" (UPL) to you, informing you that you have been declared to be an unsatisfactory participant in the USMCR due to thirty (30) UAs from weekend drills. The UPL advised you how to regain satisfactory status by correcting your deficiencies.

On 25 June 2009, your command notified you that you were being processed for an administrative discharge (Adsep) by reason of unsatisfactory participation in the ready Reserve. The notification letter advised you that as of the date of the letter you had accumulated thirty-three (33) unexcused absences. The notification advised you that if you failed to respond to the letter of notification in a timely fashion, you will be considered to have waived 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.

You did not complete and/or ever return the Adsep acknowledgement of rights form to your command, thus effectively waiving your rights in connection with the Adsep. On 25 July 2009, 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 unsatisfactory participation in the Ready Reserve. The CO specifically stated, in part:

SNM has ignored repeated attempts by the command to bring him back to a satisfactory status. SNM's continued presence on unit rolls is not conducive to good order and discipline, and is a drain on the command's resources. Recommend discharge under Other than Honorable conditions at earliest opportunity.

On 10 September 2009, the Staff Judge Advocate to the SA determined your administrative separation was legally and factually sufficient. On 20 September 2009, the SA approved and directed your OTH discharge characterization for unsatisfactory participation in the Ready Reserve. Ultimately, on or about 20 September 2009, you were discharged from the USMCR 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 contentions that: (a) you enlisted under the impression you were “going active duty,” and that you almost got “RFT” at boot camp trying to explain the situation, (b) you mobilized to ██████████ with your Reserve unit, (c) your OTH discharge is absurd, (d) the whole reason you enlisted was to get out of your hometown, (e) you could not drive the monthly distance to your Reserve unit each month, and (f) no one ever called you or sent a ride. For purposes of clemency and equity consideration, the Board considered the totality of your application, which consisted solely of your petition without any other additional documentation.

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 arguments for relief. The Board determined that the plain language of both your enlistment contract and the SOU clearly outlined your USMCR annual drill and active duty requirements and left nothing to interpretation that you were indeed in the USMCR and not on an active duty enlistment contract. The SOU terms were clear on its face and the Board noted it was your responsibility to ensure you traveled to and attended your weekend drills in person and in a timely fashion. It was not the Marine Corps’ responsibility to provide you with complimentary transportation to and from your drill weekends.

Additionally, the Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy.

As a result, 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. 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,

5/23/2025

