



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

[REDACTED]  
Docket No. 941-25  
Ref: Signature Date

[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 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).

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 enlisted in the U.S. Marine Corps and began a period of active duty service on 25 October 1999. Your pre-enlistment physical examination on, 9 August 1999, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Your last reenlistment took place in July 2007.

While assigned to [REDACTED] performing Marine Corps recruiting duties, on 1 April 2008, civilian authorities in [REDACTED] arrested and charged you with "unlawful sexual activity with a certain minor." The Court released you on bail with a GPS monitor precluding

you from going within a prescribed distance to certain places, including the victim's home, pending your August 2008 court date.

On 11 February 2008, your command initiated "relief for cause" proceedings due to your civilian arrest and pending civilian charges related to unlawful sexual activity with a minor. Your commanding officer (CO) determined that your actions reflected poorly on yourself and the Marine Corps resulting in your CO losing confidence in your ability to perform you assigned mission. On 14 February 2008, your CO's immediate superior in the chain of command (ISIC) concurred with the recommendation to remove you from recruiting duty and terminated your "SDA" pay. The ISIC stated, in part, "His actions and conduct have reflected negatively upon the Marine Corps within the local community and its high schools." On 20 March 2008, the Commanding General, ██████████ approved the recommendation to relieve you for cause from recruiting duty. Ultimately, on 21 March 2008, the Commandant of the Marine Corps (MMEA-85) formally relieved you for cause from your recruiting assignment and duties.

On 14 April 2008, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You elected your rights to consult with counsel and request an administrative separation board (Adsep Board). On 14 April 2008, your CO recommended to the Separation Authority (SA) that you receive an under Other Than Honorable conditions (OTH) discharge characterization. In his recommendation, your CO stated, in part:

The basis for this recommendation specifically is the Commission of a Serious Offense by ██████████ while acting as a ██████████ at ██████████. ██████████ was arrested on February 1, 2008, and was charged with Unlawful Sexual Activity with a Certain Minor by a civilian court...This charge is a second degree felony...If convicted, he could face up to 15 years in prison. ██████████ disregard for the rules and regulations governing the Marine Corps and the Recruiting Command display misconduct not acceptable for further service.

On 9 July 2008, an Adsep Board convened in your case. At the Adsep Board, you were represented by a Marine Corps Judge Advocate and you testified under oath on your own behalf. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence proved your violation of a lawful Marine Corps order prohibiting personal relationships with prospective recruits. The Adsep Board members subsequently unanimously recommended that you be separated from the Marine Corps with an OTH discharge characterization. Following the Adsep Board, your detailed defense counsel submitted a letter of deficiencies for consideration by the SA.

On 4 September 2008, the Staff Judge Advocate (SJA) to the SA determined that your separation proceedings were legally and factually sufficient. In his endorsement to the SA, the SJA stated, in part:

The 27-year old respondent was a recruiter having an ongoing nonprofessional,

personal, social, and sexual relationship with a 16-year old female prospective recruit applicant who wanted to join the Marine Corps and who referred to respondent as her "recruiter" and her "boyfriend."

Respondent's relationship with this female continued from September 2007 through January 2008 and included sex more than 20 times and sex on more than one occasion at ██████████.

Respondent's nonprofessional relationship with this female, whether sexual or not, is inappropriate and in violation of [DepO 1100.5A], a lawful order which prohibits such relationships between recruiting personnel and prospective recruit applicants.

On 5 September 2008, the SA denied your defense counsel's request for retention or suspension and approved and directed your separation for misconduct due to the commission of a serious offense with an OTH discharge characterization. Ultimately, on 10 September 2008, you were separated from the Marine Corps for misconduct due to the commission of a serious offense with an OTH<sup>1</sup> 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 your rank be restored to Sergeant (E-5). You contend that: (a) during your Adsep Board you were not given the right to question your accuser and there was no evidence that you slept with her, (b) after a long investigation, at your civilian trial in May 2010 you were found not guilty of one of the charges and the remaining charge was dropped, and (c) you were wrongly accused and separated. 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 unequivocally concluded that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge. The Board presumed regularity in the conduct of Government affairs, and the Board determined that you did not provide sufficient evidence to rebut the presumption. The Board noted that the Adsep Board members after considering all of the evidence before them unanimously determined that you committed certain serious professional misconduct as alleged. The Board concurred with the Adsep Board's findings and recommendations, and the Board was not willing to re-litigate the well-settled facts that are not in dispute from your Adsep Board. The Board determined that the civilian resolution of your offenses in May 2010 after your discharge was not persuasive. The Board noted that the administrative separation of a service member due to the commission of a serious offense does not require adjudication by NJP, court-martial, or a civilian conviction. Moreover, the Board determined that all that was required was that your offenses be substantiated by merely a preponderance of the evidence; a lower evidentiary standard than that at a court-martial or

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<sup>1</sup> Your DD Form 214 erroneously lists your discharge characterization as "General ((Under Other Than Honorable))."

civilian criminal trial. The Board also noted that the serious offense the Adsep Board members separated you for was not the Florida criminal charge, but rather was your violation of a lawful Marine Corps order – specifically DepO 1100.5A - prohibiting unduly familiar, personal, and unprofessional relationships between recruiting personnel and prospective recruit applicants. The Board also determined there was no credible and convincing evidence in the record regarding any purported command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your administrative separation.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade or a rank restoration back to Sergeant (E-5). The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. 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 recruiter misconduct was intentional 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative 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. 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 by a majority vote determined that your request does not merit relief.

Notwithstanding the foregoing, as noted above, block 24 of your DD Form 214 contains an error. Your character of service in block 24 erroneously indicates: “General (Under Other Than Honorable);” which is not an authorized or permitted discharge characterization in the Department of the Navy. Your correct discharge characterization should indicate “Under Other Than Honorable,” “Under Other Than Honorable Conditions,” or “Other Than Honorable Conditions.” Should you wish to have the administrative error in your block 24 entry corrected, please contact Headquarters, U.S. Marine Corps (HQMC) MMRP-13 to make the correction to your record, where appropriate. MMRP can be reached at 703-784-9204 or email: [smb.manpower.mmrp-10@usmc.mil](mailto:smb.manpower.mmrp-10@usmc.mil).

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

