



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

██████████
Docket No. 1755-25
Ref: Signature Date

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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 28 May 2005. 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 on 2 October 1979. Upon entry onto active duty, you were granted a moral waiver for unlawful use of slugs, jumping a turnstile, and apprehension with slugs in your possession.

On 24 October 1979, you received non-judicial punishment (NJP) for two specifications of disobedience of a lawful order. On 5 June 1989, you were found guilty at special court-martial (SPCM) for unauthorized absences (UA) of 28 days and one day. You were sentenced to reduction in rank, forfeiture of pay and confinement. On 27 October 1980, you were notified that you were not eligible for reenlistment due to low scores. You were eligible but not recommended for promotion for the January to March 1981 promotion period due to your frequent involvement with military authorities.

On 26 February 1981, you were found guilty at a summary court-martial (SCM) for assault on a superior Marine and for failure to obey a lawful order. You were sentenced to forfeiture of pay and confinement. Consequently, you were notified of administrative separation processing for frequent involvement. After you waived your rights, the Commanding Officer made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged with an OTH. On 20 April 1981, you began a period of UA that ended on 23 April 1981. You were so discharged on 4 May 1981.

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 the reasons behind your discharge were unjust and inequitable because the incident that led to your discharge occurred when a white service member called you a racial slur. You contend your record previous to this incident, you had no negative incident with this individual. Additionally, you assert that you are near homelessness. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, letter from the legal aid society, and the copy of your GED, Pardon, and professional certificates and awards¹.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, SCM and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Additionally, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions. Regardless, the Board found that your record of misconduct was extensive and was sufficient to support your discharge. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 considered the evidence you provided 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.

¹ In reviewing your certificates, the Board noted some of these appear to be completed while you were in civilian correctional custody.

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,

6/13/2025

