



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

██████████
Docket No. 4307-25
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 11 August 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 Marine Corps and commenced active duty on 7 August 1991. On 4 February 1992, you received non-judicial punishment, (NJP) for assaulting a Private First Class in the mouth with a helmet; resulting in his loss of two teeth. You were additionally issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct related to assault and other infractions of the UCMJ. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 25 February 1994, you were again issued a Page 11, on this occasion concerning your lack of time management and/or responsibility to be at your appointed place of duty. On 28 February 1994, you were issued a third Page 11, concerning your lack of judgment, frequent tardiness, immature attitude, and conduct unbecoming a Marine.

On 9 March 1994, you received NJP for UA on two occasions. You again received NJP for UA on 6 April 1994.

On 23 August 1994, you were convicted at Summary Court-Martial (SCM) of violating article 91 of the Uniform Code of Military Justice (UCMJ) for willfully disobeying a lawful order issued by a non-commissioned officer (NCO), using disrespectful language toward an NCO, and assaulting the NCO by grabbing him by his face and striking him in the head with your hand. You were sentenced to forfeiture of \$277 pay per month for one month, reduction to paygrade E1, and confinement for seven days.

Unfortunately, not all of the documents pertinent to your administrative separation are contained in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained in your record, your commanding officer (CO) recommended your administrative separation for misconduct due to pattern of misconduct with an Other Than Honorable (OTH) characterization of service and your intended separation was reviewed and deemed legally sufficient by the Staff Judge Advocate. The separation authority ultimately approved the CO's recommendation and you were so discharged on 2 November 1994.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 23 May 2008, based on their determination that your discharge was proper as issued.

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 to upgrade your discharge characterization of service and your contentions that your UA charges were for being only a few minutes late to formation, your insubordination charges were accrued while off duty and intoxicated, and these latter offenses did not interfere with the military. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, a congressional inquiry letter, your letter to the Board, two advocacy letters, and a letter regarding your participation in a counseling program.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, 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. Although the Board considered your contention that your UA's were brief, the Board opined the duration of your absences did not determine whether or not they were disruptive and harmful to good order and discipline within your unit. Unexpectedly absencing yourself from

your command, whether for minutes, hours, or days, placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Additionally, assault against other Marines, including a NCO, inarguably demonstrates your lack of concern for the wellbeing of your fellow Marines while showing contempt for the chain of command. Therefore, the Board was not persuaded by your argument that your misconduct was minor in nature and/or did not negatively impact your unit.

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. Although the Board carefully considered the evidence you provided in mitigation and commends you on your recent post-service rehabilitation, 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,

8/25/2025
