



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 8226-25
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 16 January 2026. 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.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Marine Corps and began a period of active duty on 28 July 2003.
2. On 10 June 2004, you received non-judicial punishment (NJP) for a period of unauthorized absence (UA) that lasted approximately 90 minutes, and for wrongful previous overindulgence in intoxicating liquor, resulting in your being incapacitated for the proper performance of your duties.
3. On 27 August 2004, you received your second NJP for a one-hour period of UA. You were subsequently issued an administrative remarks (Page 11) counseling concerning deficiencies

in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

4. On 10 September 2004, you received a second retention warning/counseling after violating restriction orders by driving your personally owned vehicle.

5. On 23 March 2005, you were convicted by a special court-martial (SPCM) for two specifications of UA for failing to go to your appointed place of duty, and two specifications of failing to obey a lawful order by failing to muster with your assigned mentor or Officer of the Day.

6. Consequently, you were notified of pending administrative separation proceedings by reason of pattern of misconduct. You were informed that the least favorable characterization of service you may receive was an Other than Honorable (OTH) discharge and you elected to requested an administrative discharge board (ADB) after consulting with legal counsel.

7. On 10 June 2005, the ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions. On 21 June 2005, your legal counsel submitted a letter of discrepancy in the ADB on your behalf. Your counsel alleged that the board had been defective and requesting a new board be convened, or, in the alternative, that the separation authority suspend your separation or upgrade your discharge to a General (Under Honorable conditions).

8. You received your third Page 11 counseling on 7 July 2005 for your lack of leadership and poor judgement, being UA from your appointed place of duty, and disobeying a lawful order, after you failed to report as barracks Assistant Duty Non-Commissioned Officer.

9. The separation authority considered the legal issues raised by the Counsel for Respondent, found no merit to them, and directed your separation with OTH character of service by reason of misconduct due to pattern of misconduct. You were so discharged on 18 July 2005.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention for mitigation and noted your contention that your assigned characterization of service was "incorrect," the Board noted you did not deny committing misconduct. Additionally, the Board was not persuaded by your argument based on your counsel's letter of deficiency since the separation authority previously considered and dismissed the issues raised in the letter. The Board also noted that you provided no new evidence to contradict the separation authority's determination. Finally, the Board found no evidence, other than your statement, to substantiate your contention that you were denied due process based on a lack of understanding of the administrative separation process. The Board considered that you were assigned legal counsel and exercised your right to an ADB. As part of that ADB, you would have been fully informed and required to acknowledge that you understood your procedural rights. Moreover, you

acknowledged your procedural rights, in writing, on 1 April 2005. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and were properly separated for misconduct with an OTH characterization of service.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of your service, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, your remorse expressed in your statement, your service to your community, the character references you provided for review, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. The Board 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. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. While the Board acknowledged your rehabilitation efforts and desire to improve your life, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. Based on the same rationale, the Board also found no basis to change your reason for separation, separation code, or reentry code.

Accordingly, given the totality of the circumstances, the Board determined 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,

2/17/2026

