



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 2220

██████████
Docket No. 9818-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 13 April 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, 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 your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined 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:

- You enlisted in the Marine Corps and began a period of active duty on 18 March 2008. As part of your enlistment processing, you admitted preservice use of marijuana.
- On 8 July 2008, you began a period of unauthorized absence (UA) which lasted 50 days and resulted in your conviction by summary court martial (SCM). You were sentenced to a period of confinement and forfeiture of pay.

- On 3 March 2009, you began a second period of UA which lasted 35 days. Consequently, you were convicted by SCM for a period of UA and intent to shirk important service. You were sentenced to reduction in rank, a period of confinement, and forfeiture of pay.
- On 13 May 2009, you were counseled concerning accountability of gear.
- On 10 August 2009, you began a period of UA which lasted 59 days and resulted in your third conviction by SCM.
- On 30 December 2009, you began a period of UA which lasted 169 days. Upon your return to military custody, on 25 June 2010, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial for your period of UA. Your commanding officer recommended the approval of your request and the separation authority approved your discharge request. On 18 August 2010, you were so discharged.

In your application to this Board, you express a desire for your discharge character of service be upgraded and your separation code changed.¹ You contend that:

- The separation code reflected on his DD Form 214 is unjust when considered in light of the circumstances you were facing during his period of service.
- You were unable to complete the application for an upgrade in time due to significant family hardships.

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

The Board initially concluded you were appropriately discharged with an OTH based on your request and record of misconduct. The Board noted you did not deny committing the misconduct that formed the basis of your request to be discharged. Therefore, the Board determined the presumption of regularity applies to your OTH discharge and no error exists with your record.

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, your desire for an upgrade to your characterization of service and change your separation code, your contentions, the totality of your service to include service highlights, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, 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. In particular, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given

¹ You also checked the "Reprisal/Whistleblower" box on your application but presented no evidence in support of this contention. In fact, you did not even discuss this contention in your application.

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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received significant clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. In making this finding, the Board also considered that you provided no evidence, other than your statement, in support of your application. Ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice. Based on the same rationale, the Board determined your separation code also remains appropriate.

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 the 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,

4/27/2026

