



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

██████████
Docket No. 10451-25
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 27 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).¹

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 4 November 1985.
- Between 2 June 1988 and 4 May 1989, you received nonjudicial punishment (NJP) on three occasions for two instances of willful disobedience of lawful order from a noncommissioned officer (NCO), violating an order by having a civilian female in your room without properly reporting visitor, two instances of making utter checks, unauthorized absence from appointed place of duty, and failure to obey an order from an NCO. After your second NJP,

¹ The Board noted you checked the "TBI" box on your application but did not respond to the Board's request to provide evidence in support of your claim. In addition, your application did not include any evidence. Therefore, the Board did not consider your application under the guidance provided in the Kurta memos.

you were issued a formal counseling cautioning you for your conduct and the consequences of any additional misconduct.

- On 1 June 1989, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct. You decided to waive your procedural rights, your commanding officer recommended you be separated with an Other Than Honorable (OTH) discharge characterization of service. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 2 August 1989, you were so discharged.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

- You are no longer the same individual you were at age nineteen, having committed yourself to personal growth, integrity, and respect.

- You are the father of five children and a grandfather of two, all of whom you helped raise to be responsible and productive adults.

- The reprimand leading to your administrative discharge was influenced by untreated and undiagnosed Traumatic Brain Injury (TBI), anxiety, and depression, compounded by a toxic work environment and alleged bullying by your Gunnery Sergeant.

- You were unfairly targeted, coerced into waiving your administrative discharge board, and threatened with confinement.

- Your record does not accurately reflect your overall honorable service and that this has unjustly limited your access to veterans' benefits.

In addition to the "TBI" box, you checked the "Reprisal/Whistleblower" box on your application. In support of your application, you submitted two character letters of support and your personal statement.

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 considered your allegation that your Gunnery Sergeant "created" a list of charges against you, the Board noted you provided no evidence, other than your statement, to substantiate your contention. Further, the Board noted you did not appeal any of your NJPs, which was inconsistent with your allegation that your NJP offenses were fabricated. 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, your contentions, the totality of your service to include service highlights, your need for veterans' benefits, 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 claim of TBI issues, 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. In particular, 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. 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. The Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Even though the Board considered your possible need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from those factors. While the Board commends you for your post-service accomplishments and acknowledged the personal difficulties you have endured, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Based on the findings above, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of War review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoW policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC § 1034(c) the Secretary of War cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of War for Personnel and Readiness (USW(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be

