



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

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Docket No: 7603-21
Ref: Signature Date



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 10 December 2021. 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 record shows that you have a continuous period of honorable service from 10 May 1989 to 31 July 1998. You reenlisted into the Marine Corps on 1 August 1998. On 15 December 1999, you submitted a written request for separation in lieu of trial by court-martial for violations of the Uniform Code of Military Justice (UCMJ), specifically, Article 92 (Failure to obey order or regulation), six specifications and Article 134 (General Article), two specifications. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and

acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request was granted, and your commanding officer was directed to discharge you with an OTH characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of a punitive discharge. You were discharged on 10 March 2000.

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 character of service. The Board also considered your contentions that: (1) you believe that the court-martial itself, along with the eventual judgement and sentence were the result of a 1999-era lack of understanding of how the internet works; (2) when the disciplinary action was decided in your case, you do not believe that the question of whether the images were publicly visible or in a private/deep web file only accessible when permissions were granted to another user of the dating site, was understood or considered by anyone involved; and (3) if someone forwarded such images to a Marine's command today, the correct questions would be asked, and the disciplinary reaction would be more in line with an understanding of the difference between privately shared images and publicly available surface web images. The Board noted you did not submit any documentation or advocacy letters in support of your application to be considered for clemency consideration.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your subsequent separation at your request to avoid trial by court-martial, outweighed these mitigating factors. The Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or sufficient evidence to warrant clemency. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Additionally, the Board noted that because of your continuous period of honorable service from 10 May 1989 to 31 July 1998, you may be eligible for veteran's benefits. You should contact the nearest office of the Department of Veterans Affairs (VA) if you desire clarification about your eligibility for benefits.

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,

12/25/2021

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Executive Director

Signed by: █