



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: 1332-22
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 15 June 2022. 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.

You enlisted in the Marine Corps and began a period of active duty on 15 July 1981. You subsequently completed this enlistment with an Honorable characterization of service on 14 July 1984. On 9 August 1985, you began your second period of active duty and subsequently completed this enlistment with an Honorable characterization of service on 26 September 1989, and immediately reenlisted. The record shows that a command investigation was conducted into your alleged misconduct while assigned as a Marine Corps Recruiter. On 2 October 1995, you were informed that you were suspected of having committed the following violations of the Uniform Code of Military Justice (UCMJ): willfully disobeying a superior commissioned officer, failure to obey a lawful written order, adultery, indecent assault, communicating a threat,

obstructing justice and conduct of a nature to bring discredit upon the Marine Corps. You were advised of your rights and invoked your right to consult with military counsel. On 4 October 1995, upon conclusion of the investigation, the investigating officer (IO) recommended that you be relieved for cause from recruiting duty and referred to a trial by court-martial for numerous violations of the UCMJ. On 9 October 1995, the commanding officer (CO) concurred with the findings and recommendations of the IO. On 12 October 1995, the CO requested that you be relieved for cause from recruiting duty for "illegal sexual misconduct." Unfortunately, the documents pertinent to your administrative separation are not 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 on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation for the good of the service in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 22 March 1996, you were discharged from the Marine Corps with an OTH characterization of service by reason of "Conduct Triable by Courts Martial Request for Discharge for the Good of the Service."

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 and assertions that you made many bad choices in your journey of becoming a man that you deeply regret, that since your discharge you have grown up as a man, become more responsible as a husband to your wife, been a deacon at the same church for the past 20 years, served as chairperson of the deacon board, and actively working in your community to include mentoring young troubled youth. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 the command investigation into your sexual misconduct and subsequent separation request to avoid trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Further, the Board considered the significant negative impact your conduct likely had on the good order and discipline of the command due to your seniority in rank. Additionally, the Board noted you already received significant clemency by being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commended your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that

warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

7/5/2022

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Executive Director

Signed by: █