

DEPARTMENT OF THE NAVY

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

> Docket No: 2827-22 Ref: Signature date



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 threemember panel of the Board, sitting in executive session, considered your application on 9 May 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, 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 26 April 1983. On 26 July 1984, you received nonjudicial punishment (NJP) for disobeying a lawful order, disrespectful in language, and wrongfully communicating a threat towards a noncommissioned officer. On 26 July 1984, you began a period of unauthorized absence (UA) which lasted five days and 3 hours. On 22 August 1985, you were counseled for unprofessional immature attitude, being short tempered, and how your attitude and immaturity was affecting your job performance. You were advised that failure to take corrective action could result in administrative separation. On

8 November 1985, you began a second period of UA which lasted eight days. On 18 November 1985, you received a second NJP for two periods of UA and disrespectful in language towards a noncommissioned officer. On 25 November 1985, you received a third NJP for failure to report to your prescribed place of duty and violation of a lawful order by being in possession of alcohol while in the barracks.

Unfortunately, the documents pertinent to your court-martial conviction and discharge 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), you were separated from the Marine on 9 June 1987, with a Bad Conduct Discharge (BCD) based on a special court martial (SPCM) conviction. In addition, the Board noted in your record that you submitted an appellate leave request on 3 September 1986.

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 contentions that you were erroneously involved on a fight with commissioned officers wearing civilian clothes, that you were receiving counseling and therapy for anger management prior to the incident, that your anger issues were attributed to the treatment you received as a Marine, and that your BCD was going to be upgraded six months following your separation from service. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined your conduct showed a complete disregard for military authority and regulations. Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 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,

