



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

█
Docket No: 3017-22
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 three-member 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).

You enlisted in the Marine Corps and began a period of active duty on 29 September 1988. On 15 April 1989, you began a period of unauthorized absence (UA) which lasted two days, 1 hour, and 6 minutes. On 1 May 1989, you began a second period of UA which lasted 25 days, 16 hours, and 30 minutes. On 14 June 1989, you received nonjudicial punishment (NJP) for the two periods of UA. On 27 August 1990, you were arrested by civil authorities and charged with spousal abuse causing injuries. You were sentenced to confinement for one year, a \$200.00 fine, and probation of one year. As a result, on 9 November 1990, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious offense. On 18 December 1990, your administrative separation proceedings were determined to be sufficient in law and fact. On 20 December 1990, the discharge authority

approved and ordered an OTH discharge characterization of service by reason of misconduct due to commission of a serious offense. On 15 January 1991, you were discharged.

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 for an upgrade and contentions that you are seeking a discharge characterization upgrade with the intent to qualify for VA benefits, that you have been a law abiding citizen for over 12 years, and that you have learned from your mistakes. 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 NJP and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the service discrediting nature of your civilian conviction for spousal abuse. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. 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,

6/1/2022

█

Executive Director

Signed by █