

DEPARTMENT OF THE NAVY

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

> Docket No: 3101-22 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 13 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 6 September 1973. On 30 June 1974, you began a period of unauthorized absence (UA) which lasted 138 days and resulted in your apprehension by civil authorities. On 25 July 1974, you were charged by civil authorities with possession of marijuana and sentenced to confinement for 6 months. On 18 November 1974, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to civil conviction. On the same date, you requested a hearing by an administrative discharge board (ADB). On 23 January 1975, the ADB determined that your poor attitude and inability to accept orders would continue to be a disciplinary liability in the Marine



Corps. On 28 January 1975, you requested a mast with the commanding general. On 31 January 1975, your administrative separation proceedings were determined to be sufficient in law and fact. On 3 February 1975, the commanding general approved your undesirable discharge but also suspended it for one year. You were advised that further misconduct will result on immediate separation from the Marine Corps. Accordingly, on 6 February 1975, your discharge was suspended. On 28 February 1975, you began a period of UA which lasted ten days, 17 hours, and 56 minutes. On 11 March 1975, you received nonjudicial punishment (NJP) for a period of UA. You appealed the NJP but were denied relief on 10 April 1975. On 21 April 1975, your commanding general directed an ADB hearing. On 23 April 1975, you failed to show cause supporting the suspension of an undesirable discharge. On 24 April 1975, your commanding officer recommended that your previous discharge suspension be vacated. On 3 June 1975, you were discharged with an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to civil conviction.

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 a discharge upgrade and contentions that your discharge was attributed to a false accusation and racism, that you endured an emotional battle attributed to the circumstances surrounding your discharge, and that you were diagnosed with Multiple Myeloma as a result of being stationed at Camp Lejeune. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing postservice 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 fact your original discharge was suspended to allow you an opportunity to correct your behavior. Ultimately, the Board found your conduct showed a disregard for military authority and regulations. Further, the Board found no evidence to support your allegations of false accusations and racism. In reviewing your record, the Board noted the Marine Corps appeared to give you every opportunity to overcome your conduct deficiencies contrary to your unsubstantiated assertions of mistreatment. 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,

