

DEPARTMENT OF THE NAVY

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

> Docket No: 4108-22 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 27 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).

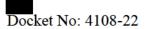
You enlisted in the Marine Corps and began a period of active duty on 5 March 1981. On 18 September 1981, you received nonjudicial punishment (NJP) for sleeping while posted as a security guard. On 22 January 1982, you received a second NJP for disobeying a lawful order from a noncommissioned officer (NCO). On 27 June 1982, you were counseled for poor performance, lackadaisical attitude, and borderline malingering. You were advised that failure to take corrective action could result in administrative separation. On 7 July 1982, you received a third NJP for disobeying a lawful order by having alcohol in the barracks. On 1 November 1982, you were counseled for possession of drug paraphernalia. You were advised that failure to take corrective action could result in punitive action. On 24 November 1982, you were counseled for frequent unauthorized absence from appointed place of duty. You were advised that failure to take corrective action could result in administrative separation. On 20 December 1982, you received a fourth NJP for disrespect towards an NCO. On 21 July 1983, you received a fifth NJP for being disrespectful in language and demeanor towards an NCO. On 3 August 1983, you received a sixth NJP for missing restriction muster and UA from appointed place of duty. As a result, on 5 August 1983, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to minor disciplinary infractions. On 9 August 1983, you elected to waive all your procedural rights. On 15 August 1983, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to be sufficient in law and fact. On 31 August 1983, the discharge authority approved an ordered an OTH discharge characterization of service by reason of misconduct. On 1 September 1983, you were discharged.

On 12 December 2008, this Board denied your request for a discharge characterization upgrade. Your request for reconsideration was also denied, on 8 April 2015, based on a lack of new evidence.

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 the discharge characterization of service you received was too harsh, that you should been given a General (Under Honorable Conditions) discharge since you were awarded a good conduct medal, and that you were told that your discharge would automatically upgrade six months following your discharge 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 six NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authority and regulations. Based on this conclusion, the Board disagreed with your assertion that your characterization of service was too severe based on your misconduct. The Board also noted that there is no provision of federal law or in 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 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, 7/15/2022 Executive Director Signed by: