

DEPARTMENT OF THE NAVY

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

> Docket No: 4182-22 Ref: Signature Date

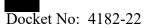


Dear Petitioner:

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 you did not file your application in a timely manner, the Board waived the statute of limitation in the interests of justice. A three-member panel of the Board, sitting in executive session, considered your application on 5 August 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 to 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 23 July 1996. You served without incident until January of 1998, when you were informally counseled for being 5 minutes late after having already received verbal warnings for frequent tardiness. On 18 February 1998, the Medical Evaluation Board (MEB) found you medically unfit for further service in the Marine Corps and referred your case to a Physical Evaluation Board (PEB), recommending that you be separated for persistent asthma and lower lobe pneumonia. The next day, you were subject to nonjudicial punishment (NJP) for failure to go to your appointed place of duty at the prescribed time and for disobeying a lawful order to field day your room. The following month, you received a second NJP for disobeying a lawful order not to establish an email account in your name after being informed that all accounts had been ordered to be disabled. After your PEB found you fit for duty, you requested reconsideration and a formal hearing; however, your request for reconsideration was denied on 5 June 1998. In August of 1998, you received formal counseling with separation and retention warnings for your previous two NJPs; your rebuttal to this counseling stated that your late arrival had been due to a car accident and that you did not feel you should receive counseling for it. However, although your

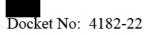


rebuttal also asserted that you would not be late again, you received a third NJP for failure to go to morning physical fitness training at the prescribed time. You received additional counseling that month for unauthorized absences from medical and dental appointments and, in October of 1998, you accepted a fourth NJP for violating your written restriction order by wearing civilian clothes and going to the exchange. As a result of repeated violations of the Uniform Code of Military Justice in spite of repeated warnings regarding your continued misconduct, you were processed for administrative separation for misconduct due to minor disciplinary infractions. You were discharged, on 9 December 1998, with an Other Than Honorable (OTH) characterization of 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 and your contentions that: you were a good Marine prior to experiencing medical issues which restricted your ability to perform; that your mother contacted her Congressman about your initial medical problems and you believe action on your subsequent misconduct was taken in reprisal for the inquiry to your command; that you do not believe you were a "bad" Marine as reflected by your current characterization of service; and, that your post-discharge character merits an upgrade under clemency considerations. Further, the Board considered the argument from your local Veteran's Services Officer (VSO) describing the severity of the total punishments you served in your final 180 days of service for minor infractions after suffering chronic illness. For purposes of clemency consideration, the Board noted you provided advocacy letters but no documentation describing post-service accomplishments.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Contrary to your arguments, the Board did not find your orders violations to be minor in nature and concluded it showed a complete disregard for military authority and regulations. Further, although the Board considered your contentions regarding the PEB denial of the MEB recommendation and your allegations regarding the handling of your misconduct as potential retaliation, the Board noted that you have the burden to establish that an error or injustice effected the circumstances of your administrative discharge and, at present, you have not presented sufficient evidence in support of your contentions. 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. While the Board considered the additional evidence you submitted regarding post-discharge character, it concluded that the favorable matters you submitted for consideration were also insufficient to outweigh the severity and nature of your misconduct. Therefore, 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 is attached 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.



