

## **DEPARTMENT OF THE NAVY**

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

> Docket No: 4192-22 Ref: Signature Date

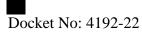
## Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 20 July 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You previously applied to this Board for an upgrade to your characterization of service and were denied on 7 July 2011 and 27 February 2017. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief on 10 November 1972 and 14 April 1980.

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 character of service and contention that your discharge was brought on by injuries sustained in service and that those injuries adversely effected your conduct but in no way reflect your overall character and performance as a Marine. Additionally, you contend that the events leading to your discharge all began with minor disagreements and that the incidents led to more aggressive verbal conflicts. As a young Marine, you were trying to explain your limitations when being directed to complete task that where beyond your abilities. In your opinion, this presented you as willfully disobeying direct orders. For purposes of elemency consideration, the Board noted you provided an accident



free driving certificate from 1987 but no other supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your five NJPs and one SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service during which you committed these multiple offenses and the seriousness of your misconduct that included multiple incidents of failing to obey orders. Furthermore, the Board was not persuaded by your arguments in mitigation and noted you provided no evidence to substantiate your contentions. As a result, the Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Based on these factors, the Board determined 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 your request does not merit relief.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

