



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

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Docket No: 4672-22
0624-17
0251-15
Ref: Signature Date

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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. Your current request has been carefully examined by a three-member panel, sitting in executive session on 27 July 2022. The names and votes of the members of the panel 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 27 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 began a period of active service on 31 July 1981. You received non-judicial punishment (NJP), on 2 August 1982 and 28 January 1983, for the following offenses: failure to obey a lawful order, unauthorized absence (UA) from your place of duty, willfully disobeying a lawful order, and disrespectful language toward a non-commissioned officer (NCO). On 18 March 1983, you were convicted at a summary court martial (SCM) for breaking restriction. Based on your misconduct, on 11 May 1983, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of

misconduct, at which point, you waived your right to consult with counsel, and a hearing before an administrative discharge board (ADB). On 17 May 1983, your commanding officer recommended your separation with an Other Than Honorable (OTH) character of service. On 21 June 1983, the separation authority approved and directed your separation with an OTH character of service by reason of misconduct due to pattern of misconduct. On 30 June 1983, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request on 6 February 1985 after determining your discharge was proper as issued. In addition, this Board previously denied your requests for a discharge upgrade on 12 January 2016 and 7 March 2018.

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 offenses were minor and your service was otherwise faithful and meritorious. In addition, you provided Department of Veterans Affairs (VA) documents that reflect your entitlement to disability benefits. 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 NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. The Board also noted that you were counseled on multiple occasions and warned of the consequences of your continued misconduct. Further, the Board disagreed with your assertion that your misconduct was minor and noted the likely negative effect it had on the good order and discipline of your unit. Finally, the Board noted decisions reached by the VA to determine if former service members rate certain benefits do not affect previous discharge decisions made by the Marine Corps. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Marine Corps when determining a member's discharge characterization. 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 your VA evidence, 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 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

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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,

8/16/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]