



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

Docket No: 5325-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 1 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, 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 5 August 2019. On 22 November 2019, you were counseled for willful disobedience of lawful orders. You were advised that failure to take corrective action could result in administrative separation. On 4 December 2019, you were convicted by summary court martial (SCM) for disobeying a lawful order from two noncommissioned officers by refusing to train. You were sentenced to forfeiture of pay and confinement. On 12 December 2019, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and commission of a serious offense. Subsequently, you elected to waive all your procedural rights. On 27 January 2020, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. On 5 February 2020, you were discharged with an OTH

characterization of service by reason of misconduct due to pattern of misconduct and assigned an RE-4 reentry code.

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 an upgrade to your reentry code to reenlist and contentions that you were not aware of the drastic repercussions caused by your misconduct. 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted you were responsible for your misconduct and not suitable for continued naval service based on your history of disobeying orders. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a RE-4 reentry code. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your reentry code or granting clemency in your case. 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,

8/25/2022

