

included, but were not limited to, your desire to upgrade your discharge and your contentions that your discharge has placed you and your family in a position of receiving harassing calls and threats as well as having to plead guilty, post-discharge, to a different crime which you alleged you did not commit, and therefore face deportation proceedings as a result of having been convicted of crimes involving moral turpitude (CIMT). You also state that you have suffered two years of incarceration and incurred over \$100,000 in legal fees in the process of successfully contesting your deportation proceedings and now seek mercy and a second chance. For purposes of clemency and equity consideration, the Board noted the supporting documentation you submitted.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your GCM conviction, 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 that the Superior Court of ██████████, which originally convicted you in June of 2011 for indecent exposure and/or child molestation in violation of certain state statutes, subsequently issued an order granting dismissal of your guilty plea under the caveat that the relief granted did not relieve you of the duty to register as a sex offender. You were subsequently identified by the Federal Bureau of Investigation as a victim in an investigation of extortion and cyber harassment by several websites related to sex offender registries. On 18 April 2018, an Immigration Judge ordered your removal based on having been convicted of two CIMTs; however, the Board of Immigration Appeals (BIA) sustained your appeal and terminated the removal order on 19 May 2021 after determining that your post-discharge offense under the ██████████ criminal statutes did not amount to a CIMT. The Board observed that, likewise, with the affirmation of your GCM findings and sentence by the appellate review authority, the BIA opinion was limited to your post-discharge proceedings by the state of ██████████ and found no error in the identification of your GCM as constituting a CIMT. While the Board recognizes that the consequences of the commission of serious crimes and a resulting punitive discharge may have a long-term, adverse effect, the authority of the Board does not extend to upgrading a DD simply to remove the prejudice of that discharge. Additionally, the Board concluded that, even if your DD were upgraded, it would not remedy your primary complaint with respect to having been convicted of a CIMT or of having to register as a sex offender because the Board has no authority to overturn or expunge criminal convictions. Accordingly, the Board found matters you submitted for consideration of post-discharge clemency insufficient to outweigh the misconduct evidence by your GCM conviction. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a DD. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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.

Sincerely,

11/18/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]