

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

Docket No: 6076-22 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 found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A threemember panel of the Board, sitting in executive session, considered your application on 30 November 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 18 October 1985. In July 1986, you were assigned to the weight control program. Subsequently, you were in an unauthorized absence (UA) status from 23 October 1986 through 12 November 1986, following which you were subject to your first nonjudicial punishment (NJP) for a violation of Article 86, UA. Counseling entries reflect that you continued to make a lack of progress on weight control until you were removed from the program in December 1986. You received a second NJP for another brief UA in July 1987. You were counseled the following month for being UA from your appointed place of duty, for poor military appearance and professional attitude, and for failure to pay just debts. You were counseled again, on 5 September 1987, for being UA over the Labor Day holiday period, for disobeying orders from superiors, and for having poor job performance and attitude toward the Marine Corps. You received a third NJP following a final,

4-day period of UA from 25 - 28 September 1987; however, no administrative separation action was initiated at that time.

In November 1987, you were counseled for being reassigned to the weight control program and again counseled, in February of 1988, regarding unsatisfactory progress. You were also counseled, on 19 February 1988, for a pattern of misconduct due to minor disciplinary infractions with guidance that you needed to be on time, obey orders and regulations, and not enter into a UA status. Statements from your immediate leadership reflect that you were lethargic in nature, required constant supervision, would only do specifically what was instructed, and could not be depended upon. Your supervisory noncommissioned officer, staff noncommissioned officer, and officer-in-charge all recommended that you be discharged with a General (Under Honorable Conditions) discharge. However, when you were notified of administrative separation processing by reason of misconduct due to a pattern of misconduct on 16 March 1988, your commanding officer informed you that you could receive an Other Than Honorable (OTH) characterization of service, which he later recommended. You waived consultation with legal counsel and your right to a hearing before an administrative separation board. Following approval of the recommendation for your separation by Commanding General, you were discharge with an OTH, on 4 April 1988, with final proficiency

and conduct marks of 3.9 and 4.0 respectively.

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 your infant child's birth defect resulted in emergency hospitalization and surgery, which resulted in your return to weight control and caused you to experience stress and depression. You further contend that there was no misconduct involved with your discharge and that the actual reason for your administrative separation was due to refusing to accept overseas orders issued the day after your son's surgery; you apologized for not following through on your commitment to the Marine Corps but affirm that you feel you made the correct decision based on the needs of your child. You also assert that your nearly 3-year record of serviced requires a better characterization in light of post-discharge character and accomplishments. For purposes of clemency and equity consideration, the Board noted, other than your personal statement, you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. While your contentions regarding refusal of overseas orders theoretically could have factored into the decision to proceed with administrative separation, you submitted no evidence in support of this allegation or in support of your contention that your son's medical condition should be considered as a mitigating factor. Absent such substantiating documentation, and regardless of the indicia of potentially mitigating factors that the Board observed may be reflected by the more favorable characterization recommendations from your immediate chain of command, the Board determined the evidence of misconduct documented in your service record adequately supports the actions taken with regard to your administrative separation and OTH discharge. Similarly, as previously mentioned, you failed to provide any

evidence to substantiate your assertions of post-discharge good character and accomplishments. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board considered your assertions of post-discharge accomplishments and good character, 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.

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|                    | 12/19/2022 |
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| Executive Director |            |
| Signed by:         |            |
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Sincerely,