



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: 6306-22
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 October 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 enlisted in the Marine Corps and began a period of active service on 6 June 2006. From the period beginning on 25 June 2007 to 18 July 2007 you were counseled on three occasions regarding various misconduct, and your non-eligibility for promotion. You were notified failure to adhere to Marine Corps guidelines may result in the initiation of administrative separation proceedings. On 18 July 2007, you received non-judicial punishment (NJP) for your unauthorized absence from your appointed place of duty. You were counseled the following day for additional violations of UCMJ, which include unauthorized absence, making a false official statement, damage of government property, and tardiness. You were further notified continued misconduct would result in administrative separation. On 17 August 2007, you received NJP for failure to obey and order. You were counseled on three more occasions regarding your deficiencies, and receipt of NJPs from the period beginning on 17 August 2007 to 31 August 2007. On 31 August 2007, you received your third NJP for UA. As a result, you were notified of the initiation of administrative separation proceedings for pattern of misconduct, at which point, you waived your right to consult with counsel, and your right to a hearing of your case

before an administrative discharge board (ADB). Your commanding officer recommended your separation with an Other Than Honorable (OTH) character of service. On 18 October 2007, you were discharged with an OTH character of service by reason of misconduct due to pattern of misconduct.

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 the character of your service and contentions that all of your offenses were minor, never resulted in a court martial conviction, and could have been resolved with counseling. Further, you contend 15 years have passed since your discharge from the Marine Corps. 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 multiple counselings, 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. Ultimately, the Board concluded your conduct showed a complete disregard for military authority and regulations. Further, the Board was not persuaded by your contentions that your misconduct was minor and resolvable through counseling. The Board noted you were counseled repeatedly by your chain of command and issued multiple warnings each time, before and after, NJP was imposed. This led the Board to conclude that your conduct was not correctable through counseling and NJP was appropriately imposed based on your unwillingness to follow orders and regulations. In addition, the Board noted that your conduct involved an orders violation; the Board determined this offense alone was sufficient to qualify as a serious offense. When combined with your other misconduct, the Board determined, in total, it supported your processing for pattern of misconduct and the assignment of an OTH characterization. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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. 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 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



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,

10/21/2022

