



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

██████████
Docket No. 71-23
Ref: Signature Date

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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 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 January 2023. 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 to 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 Navy and began a period of active duty on 10 August 2020. You served without incident until 8 March 2022, at which time you were subject to nonjudicial punishment (NJP) for violations of Article 92, for failure to obey a lawful order, Article 116, for riot or breach of peace, and Article 128, for assault. Incident to your NJP, you were issued an adverse performance evaluation in which you were not recommended for retention and processed for misconduct due to commission of a serious offense. This evaluation was signed by your then-commanding officer.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial

evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 24 June 2022 with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Misconduct – Serious Offense," your separation code is "JKQ," and your reenlistment code is "RE-4."

In your previous application to the Board, considered on 21 September 2022, you requested a change of your reentry code from "RE-4" to "RE-1," contending that your former commanding officer supported your request and providing contact information for the same with no supporting evidence. However, as was noted in the letter regarding the Board's unfavorable decision, the Board is not an investigative agency and does not have the time or resources to obtain evidence on your behalf.

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 are not limited to, your continued desire to change your reentry code to "RE-1," your additional desire to now upgrade your characterization of service to "Honorable," and your contentions that your former commanding officer at the time of your discharge support of your request. In support of your petition, you submitted a letter "to whom it may concern" from the Navy Captain / O-6 who served as your commanding officer at the time of your separation. For purposes of clemency and equity consideration, the Board noted 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 NJP, 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. Additionally, the Board considered the letter provided from your former commanding officer. The letter provides support based on the premise that the event which resulted in your separation was an isolated one which was otherwise out of character and that you showed good military bearing and dedication throughout the remainder of your service. In significant part with respect to your specific request, this letter acknowledges the nature of your petition as specifically seeking to change the status of your characterization of service from "General" to "Honorable" without reference to support for a change of your reentry code which might permit a less restrictive process to seek reenlistment or enlistment into another military branch. In fact, this letter specifically states that your "actions warranted an administrative separation from the military" and that your NJP and separation are sufficient punishment without the continued need to punish you via a reduced characterization. To this extent, the Board found that the letter supported only an upgraded characterization of service and not a change to your reentry code.

Therefore, with respect to the letter and your misconduct, the Board made two specific findings. First, noting that the letter you provided generally appears similar to the available signatures on your performance evaluations but was not drafted on an official letterhead and uses atypical language in referring to NJP / Captain's Mast as "Article 15," the Board determined that it would need proof of transmission in order to confirm the authorship of the letter and favorably consider it as persuasive evidence in support of your request. Specifically, the Board would need

