

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

> Docket No. 1083-23 Ref: Signature Date



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 threemember panel of the Board, sitting in executive session, considered your application on 19 April 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 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 their understanding of the issues 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 6 February 1963. During the period from 18 November 1963 to 21 April 1965, you received five instances of non-judicial punishment (NJP). Your offenses were three periods of unauthorized absence (UA) totaling 11 days, breaking restriction, disrespect in language toward a noncommissioned officer (NCO), missing movement, violation of a verbal order from a superior commissioned officer, violation of a lawful written order, wrongful appropriation of a liberty card, and failure to obey a lawful regulation. On 27 July 1966, you were convicted by a special court-martial (SPCM) of assault and two specifications of UA totaling 25 days. As punishment, you were sentenced to

confinement, forfeiture of pay, and reduction in rank. On 10 January 1967 and 6 March 1967, you received two additional NJPs. On 8 March 1967, your commanding officer informed you that you were not recommended for reenlistment due to your conduct during your enlistment. On 14 May 1967, at the expiration of your active obligated service, you were issued an Armed Forces of the United States Report or Transfer of Discharge (DD Form 214) that annotated your characterization of service as General (Under Honorable Conditions). Your final conduct average was 3.7.

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 character of service and contentions that your command told you that you "did not have enough points to qualify for an Honorable discharge" and you were physically assaulted while you were in confinement. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your seven NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted that your conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of service, a conduct mark average of 4.0 was required to be considered for a fully Honorable characterization of service; a minimum mark you failed to achieve due to your extensive record of misconduct. The Board thus concluded you were responsible for your misconduct that formed the basis for your General (Under Honorable Conditions) characterization of service. The Board also noted, despite your record of misconduct, you were given opportunities to correct your behavior and allowed to continue to the end of your obligated service rather than face administrative separation with the potential for an Other Than Honorable discharge. Therefore, the Board determined you already received a large measure of clemency. As a result, the Board determined significant negative aspects of your active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

