

DEPARTMENT OF THE NAVY

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

> Docket No. 2817-23 Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's 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 1 May 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 spouse's 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).

Your spouse entered active duty with the Marine Corps on 28 February 1979. During the period from 18 September 1979 and 7 November 1979, he received two non-judicial punishments (NJP) for willfully disobeying a lawful order and absence from appointed place of duty. On 9 January 1980, he received NJP for two specifications of absence from appointed place of duty and three specifications of willfully disobeying a lawful order. On 4 April 1980, a summary court-martial (SCM) convicted him of failure to go at time prescribed to appointed place of duty and disobeying a lawful order. On 17 June 1980, he received a warning counseling due to his frequent involvement with military authorities. On 20 February 1981, he received NJP for UA totaling five days. Subsequently, he was notified of pending administrative separation action by reason of frequent involvement with military authorities. After he waived his rights, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge by reason of misconduct due to frequent involvement with military authorities with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's

recommendation and directed an OTH characterization of service by reason of misconduct due to frequent involvement with military authorities. On 25 March 1981, he was so discharged.

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 his discharge and contentions that he suffered a severe stroke and a heart attack, he is disabled and impaired, he is proud of his military service, and regretted his misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing his 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 spouse's misconduct, as evidenced by his NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact his conduct had on the good order and discipline of his command. Finally, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded your spouse's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board empathizes with your spouse's medical issues, 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. 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.

