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

[redacted]
Docket No. 4875-23
Ref: Signature Date

[redacted]

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 November 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 30 May 1979. Upon your enlistment, you were issued a moral waiver. On 27 June 1979, you received nonjudicial punishment (NJP) for assaulting another Marine. On 31 January 1980, you were counseled concerning your tendency towards substandard performance, minor infractions towards the UCMJ, and unsatisfactory behavior. Subsequently you were advised that failure to take corrective action could lead to judicial action, administrative separation, or both. On 19 August 1981, you were convicted by special court martial (SPCM) for UA from appointed place of duty, two instances of wrongful possession of a controlled substance-marijuana, not having your

military identification in your possession, and assault by striking a store keeper on the ear with a closed fist. You were found guilty and sentenced to reduction to the inferior grade of E-2, forfeiture of pay in the amount of $350.00 for a period of three months, and confinement at hard labor for a period of three months. On 7 May 1982, you received a second NJP for indulgence in alcoholic beverages incapacitated for the performance of your duties, wrongfully having alcoholic beverages in the barracks, and wrongful use of a controlled substance-marijuana. On 18 June 1982, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement. On 25 June 1982, you decided to waive your procedural rights. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. On 21 July 1982, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the separation authority approved and ordered and OTH discharge characterization by reason of misconduct due to frequent involvement. On 30 July 1982, you were 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 for a discharge upgrade and contentions that your discharge was unjust, in part, because it was done without an administrative discharge board (ADB). Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's 11 September 2023 letter requesting supporting evidence for your claim. 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 NJPs and SPCM, 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contentions that you were unjustly discharged. The Board considered that you continued to commit misconduct even after you were notified of administrative separation processing and that you waived your right to an ADB. 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. 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 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 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,

11/23/2023

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