



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

■
Docket No. 7480-23
Ref: Signature Date

Dear ■

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 25 October 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).

You enlisted in the Marine Corps and began a period of active duty on 30 December 1999. On 18 May 2001, you received non-judicial punishment (NJP) for nine specifications of failure to report to your appointed place of duty, insubordinate conduct, and failure to obey an order. On 11 June 2001, you received a second NJP for failure to obey a lawful written order. On 12 June 2001, you were issued an administrative remarks (Page 11) counseling concerning your established pattern of misconduct.

On 10 August 2001, you submitted a written request for separation in lieu of trial (SILT) by court-martial for twelve specifications of failure to go at the time prescribed to your appointed place of duty, failure to obey a lawful order from a superior commissioned officer, failure to obey a lawful order from a commissioned officer and a noncommissioned officer, and malingering. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting

such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 27 September 2001, 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 to change your discharge character of service to “Medical Under Honorable Conditions” and contention that you are tired of knowing that you were treated unjustly, you were mentally broken, and you should have never been discharged with anything other than a medical discharge under Honorable conditions. Additionally, the Board noted you checked the “PTSD” and “Other Mental Health” box on your application but chose not to respond to the 12 September 2023 letter from the Board requesting evidence in support of 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Additionally, based on your administrative separation processing for a SILT request that resulted in an OTH characterization, the Board determined that you were ineligible for disability processing even if there was evidence to support your claim. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. 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 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,

11/7/2023

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Executive Director

Signed by: █