



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

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Docket No. 1111-24
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 9 February 2024. 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 initially enlisted in the U.S. Marine Corps and began a period of active duty service on 2 July 2007. Your pre-enlistment physical examination, on 9 May 2007, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You last reenlisted on 2 September 2010.

On 12 June 2008, you received non-judicial punishment (NJP) for violating a lawful general order for driving on a suspended driver license and while your on-base driving privileges were suspended. You did not appeal your NJP. On the same day, your command issued you a "Page 11" counseling warning (Page 11) documenting your NJP. The Page 11 warned you that a failure to take corrective action may result in judicial or adverse administrative action, including, but not limited to, administrative separation.

On 2 January 2011, you were arrested and held in custody by the █ Police Department for spousal physical abuse. On 1 April 2011, your command issued you a Page 11 warning documenting such physical abuse. On 15 April 2011, you received NJP for missing movement due to your civilian arrest and making false official statements. You did not appeal your NJP.

On 5 October 2012, you were convicted at a General Court-Martial (GCM) of two specifications of false official statements, two specifications of assault, and three weapons-related violations. Your

GCM sentence included confinement for fifteen (15) years and a Dishonorable discharge. On 30 April 2013, the Convening Authority approved the GCM sentence. However, your conviction was purportedly overturned on evidentiary grounds.

On 31 March 2015, pursuant to your guilty pleas, you were convicted at a GCM of assault consummated by a battery upon your spouse, and two specifications of wrongful firearms possession. You received as punishment two years of confinement, total forfeitures of pay for two years, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). Upon the completion of appellate review in your case, on 21 December 2016, you were discharged from the Marine Corps with a BCD and assigned an RE-04 reentry code.

On 22 April 2019, this Board denied your initial petition for a discharge upgrade. You did not proffer any mental health contentions with your first petition. On 29 January 2021, this Board again denied your petition for relief. In your second petition, however, you proffered certain mental health contentions to include PTSD and suffering a traumatic brain injury.

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: (a) you have stayed out of trouble for seven years, (b) you have obtained an Associates in Arts degree and a Bachelor of Science degree in nursing, and (c) you still maintain your innocence. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that a BCD is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board was not persuaded with your continued contention that you maintain your innocence. The Board noted that during a GCM guilty plea such as yours, the MJ will only accept your guilty plea once they were satisfied that you fully understood the meaning and effect of your guilty plea, and only after determining that your plea was made voluntarily, of your own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had you state on the record that discussed every aspect of your case including the evidence against you and possible defenses and motions in detail with your lawyer, and that you were satisfied with your counsel's advice. Further, the MJ would have also had you state on the record that you were pleading guilty because you felt in your own mind that you were guilty. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors

or improprieties had occurred at any stage in your case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in your case. In the end, the Board concluded that any such suggestion or argument that you did not commit the offenses to which you pleaded guilty was entirely without merit and not persuasive. Accordingly, the Board determined that you knowingly and voluntarily pleaded guilty to a domestic violence-related offense because you were indeed guilty of such offense.

Based on your previous application, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, even under the liberal consideration standard, the Board concluded that your misconduct was not due to mental health or mental health-related symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct and total disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a GCM of serious misconduct involving domestic violence, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge educational accomplishments, 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 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,

2/27/2024

