

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

> Docket No. 2186-24 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 8 May 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 enlisted in the Marine Corps Reserves (USMCR) and began a period of active duty for training on 2 July 1984. On 21 December 1984, you received an Honorable characterization for your period of active-duty service and transferred to your Reserve unit. On 14 April 1985, you were issued an administrative remarks (Page 11) counseling concerning your failure to comply with orders directed by a commissioned officer. On 11 May 1985, you were issued a Page 11 counseling concerning your unsatisfactory drill participation. The Page 11 expressly advised you that your continued unsatisfactory drill participation could result in involuntary active duty for 45 days.

Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to unsatisfactory participation in reserve training as evidence by your 18 unexcused absence from drill participation. You waived your procedural right to consult with military counsel and to present your case to an administrative

discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the USMCR with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the USMCR by reason of failure to participate. On 1 December 1986, 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 upgrade your discharge character of service and contentions that: (1) you did not handle the situation appropriately, (2) you could have and should have continued to honor your obligation, (3) you were young and did not have the foresight to handle situations appropriately, and (4) your request is based primarily on a defective enlistment due to misrepresentation by your recruiter. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

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 unsatisfactory participation in drill, outweighed these mitigating factors. In making this finding, the Board the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board noted you provided no evidence, other than your statement, that your enlistment was defective.

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. While the Board commends your post-discharge accomplishments and 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,



