

DEPARTMENT OF THE NAVY

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

> Docket No. 3088-24 Ref: Signature Date

Dear

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 June 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 25 September 1989. After your initial entry, you were granted two waivers: one for your pre-service drug use and the other for your defective enlistment due to non-disclosure of the same. On 9 May 1990, you were administratively counseled for missing movement through failure to make proper arrangements to be at your place of duty by the time required.

On 5 February 1993, you were arrested by civilian authorities on charges of attempted murder, possession of a sawed-off shotgun, and possession of cocaine for the purpose of sales. The record of your civilian arraignment reflects two counts of willful and unlawful assault with a firearm upon two different individuals, with the nature of the firearm sufficient to cause the

offense to be a serious felony. Additionally, the first count of assault specified that you had personally inflicted great bodily injury to the other individual, with intent, likewise causing the offense to become a serious felony. In light of your lengthy civilian incarceration pending serious felony charges, you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense, with a recommendation for your discharge under Other Than Honorable (OTH) conditions. Your separation was approved, and you were so discharged on 23 January 1995.

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 and your contention that you entered the Marine Corps with a terrible drug habit but received a waiver for enlistment and were given a chance to serve, which you did with honor and pride while you were sober and drug-free. You state, however, that your addiction got the better of you and resulted in your arrest, civil incarceration, and discharge. You state that you "entered Walden House and [have] been clean 26 years." For purposes of clemency and equity consideration, the Board noted you did not provide 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 civil offenses, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect it had on the Marine Corps. Further, the Board considered the violent nature of your misconduct. Finally, the Board noted you provided no 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 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 is attached 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.

