

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

> Docket No. 4358-24 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 entered active duty with the Marine Corps on 12 May 2005. On 13 August 2007, you received non-judicial punishment (NJP) for absence from appointed place of duty and two specifications of disrespectful in language toward a non-commissioned officer (NCO). On 1 February 2008, you received NJP for failure to obey a lawful order, driving under the influence of alcohol, and making a false official statement. On 9 May 2008, a summary courtmartial (SCM) convicted you of two specifications of disobeying a lawful order and making a statement to a superior NCO with intent to deceive. On 23 July 2008, you received NJP for driving while on base suspension. Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 20 November 2008, 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 and contention that your First Sargent approved your leave request, you went into a UA status because your mother was sick and required surgery, and you were granted post-traumatic stress disorder (PTSD) due to serving in \_\_\_\_\_\_. The Board noted that you provided no evidence in support of your PTSD 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions. Finally, the Board considered that you were not processed for administrative separation due to the circumstances you described in your application; rather, you were processed for one incident of failure to report for duty, multiple orders violations, false statements, and an incident of disrespect. The Board found that all these offenses showed a complete disregard for military authority and regulations.

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 upgrading your characterization of service. 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,