

DEPARTMENT OF THE NAVY

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

> Docket No. 5804-24 Ref: Signature Date

Dear Petitioner:

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 28 August 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 father's 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 U.S. Navy and entered active duty on 6 June 2001. In October 2002, you were issued a counseling warning for failing your Fall 2002 Physical Readiness Test (PRT). You also failed your fall 2003 and spring 2004 PRTs. On 1 March 2004, you were arrested for aggravated domestic assault. Consequently, you were notified for separation for misconduct due to commission of a serious offense and you elected an administrative discharge board (ADB). On 1 June 2004, the ADB found misconduct and recommended your discharge with a General (GEN) characterization of service. Your Commanding Officer (CO) forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation and directed you be discharged. You were so discharged on 2 July 2004

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in in accordance with the Wilkie Memo. These included, but

were not limited to, your desire for a discharge upgrade and contentions that the charges that formed the basis for your separation were dropped against you, you were shipped to for 15 months, and you were wrongfully discharged when you returned. For purposes of clemency and equity consideration, the Board noted you provided a personal statement.

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 ADB findings of misconduct, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted that the ADB considered all the evidence submitted by your counsel and determined your discharge for commission of a serious offense was supported by the evidence. The fact the civil charges were subsequently dismissed was not persuasive evidence to the Board that the ADB findings were erroneous or unjust since you provided no evidence regarding the circumstances of the dismissal. The Board considered that a court may choose to dismiss a case for a number of reason unrelated to whether you actually committed the criminal misconduct. Absent substantial evidence that you did not commit the misconduct, the Board determined the presumption of regularity applies to the ADB findings in your case. The Board further noted you provided no evidence, other than your statement, to substantiate your contentions that you were deployed to Iraq for 15 months after your arrest on 1 March 2004. Your record documents that you were discharged approximately four months after your arrest and that your command was aware that your civil charges were dismissed.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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.

