

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

> Docket No. 5835-24 Ref: Signature Date

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.

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 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 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).

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

You enlisted in the Marine Corps Reserves (USMCR) and began a period of active duty for training on 9 December 2002. On 28 June 2003, you received an Honorable characterization for your period of active-duty service and transferred to your Reserve unit. During the period from 6 February 2006 to 5 June 2006, you were issued five administrative remarks (Page 11) counselings concerning your unsatisfactory drill participation. On 11 July 2006, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of unsatisfactory participation in the ready reserve due to nine or more missed drills. On 21 August 2006, you waived your procedural right to consult with counsel and to present your case to an administrative discharge board. On 16 October 2006, your commanding officer

advised you that should you continue to miss drill you will be subject to assignment to involuntary active duty or discharge from the Selected Marine Corps Reserve (SMCR) under conditions other than honorable.

On 14 April 2007, you were informed that you were declared an unsatisfactory participant in the SMCR. On 22 January 2008, the Site Commander forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps Reserve with an Other Than Honorable (OTH) characterization of service. As part of the Commander's recommendation, the Commander stated in pertinent part:

[Petitioner] is recommended for administrative separation due to a very long period of unsatisfactory participation in the SMCR program. [Petitioner] has shown lack of communication to the command that she does not intend to fulfill the terms of her contract. This Marine has a record of being UA since 2007. We have attempted contact via phone and have had no success. We have exhausted all means to bring this Marine back. This Marine has clearly demonstrated that she has no interest in the Marine Corps tenets of Honor, Courage, and Commitment.

The separation authority approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps Reserve by reason of unsatisfactory participation in ready reserve. On 5 April 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 character of service and contentions that: (1) you were harassed by your squad leader, (2) your squad leader denied your leave request because you refused his advances, (3) you did not understand that you could bypassed your squad leader and request leave from someone else, and (4) you were told that if you did not show up that you would UA and to never comeback. 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 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. Additionally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. However, contrary to your contention that you were required to report for drills

and, by continuing to miss drills, would face administrative separation under OTH conditions. Therefore, the Board did not find your contentions persuasive.

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 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,