

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

> Docket No. 7466-24 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 30 September 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 Navy and commenced active duty on 24 May 1976. On 11 August 1976, you received non-judicial punishment (NJP) for possession of marijuana. On 8 November 1976, you commenced a period of unauthorized absence (UA) from 0700 to 2240. On 16 November 1976 you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct, specifically a propensity to over-extend both leave and liberty.

On 7 December 1976, you commenced a period of UA, during which you missed ship's movement, that ended in your surrender on 7 January 1977. On 20 January 1977, you received NJP for 30 days of UA and missing ship's movement. The same day, you commenced another period of UA that ended in your surrender on 18 May 1977. Additionally, you were issued a Page 13 counseling concerning deficiencies in your performance and/or conduct. On 13 June 1977, you were found guilty at Special Court Martial (SPCM) of UA from 20 January 1977 to 18 May 1977. You were sentenced to reduction in rank to E-1, forfeitures, and confinement. Consequently, you were notified of pending administrative separation processing with a General (Under Honorable Conditions) (GEN) discharge by reason of unsuitability due to

apathy and defective attitude. You waived your rights to consult counsel or submit a statement to the Separation Authority. The Separation Authority subsequently directed your discharge with a GEN characterization of service and you were so discharged on 28 July 1977.

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 change your discharge characterization of service and your contentions that your misconduct was mitigated by a mental health condition. The Board noted you checked the "PTSD" "Other Mental Health" boxes on your application but chose not to respond to the 19 July 2024 letter from the Board requesting evidence in support of your claims. 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board also noted you provided no evidence, other than your personal statement, to substantiate your contentions. Finally, the Board noted that you were given multiple opportunities, over your fourteen months of service, to address your conduct issues but you continued to commit misconduct, which ultimately led to your discharge for unsuitability. Ultimately, the Board concluded you were fortunate to receive a GEN characterization of service based on your record of misconduct during a relatively brief period of active duty.

As a result, the Board concluded that significant negative aspects of your service outweighed 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.

