

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

> Docket No. 7702-24 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 three-member panel of the Board, sitting in executive session, considered your application on 28 October 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 Marine Corps and began a period of active duty on 27 January 1978. On 16 June 1978, you received non-judicial punishment (NJP) for failure to obey a lawful order. On 21 September 1979, you received your second non-judicial punishment (NJP) for failure to obey a lawful order. On 7 January 1980, you received your third NJP for failure to obey a lawful order and sleeping on post. On 1 October 1980, you were convicted by a summary court-martial (SCM) for sleeping on post. On 23 February 1981, you were convicted by a special court-martial (SPCM) for failure to obey a lawful order. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to misconduct, frequent involvement with military authorities and you elected to have your case heard by an administrative discharge board (ADB). On 26 May 1981, the ADB found you had committed misconduct and recommended that you be discharged with an Other Than Honorable (OTH) discharge. The separation authority approved the recommendation and e you were so discharged on 23 July 1981.

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 expunge a performance evaluation you received. You contend that "it¹" was erroneous and your desire to receive Department of Veterans Affairs medical care for conditions accrued while serving in the military. For purposes of clemency and equity consideration, the Board considered that you did not submit any supporting documentation in support of your application.

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, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also 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. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct that led to your OTH discharge. Additionally, the Board in its review discerned no impropriety or inequity in your discharge or any issued performance evaluations. The Board also noted that you provided no evidence, other than your statement, that substantiates your contention that your performance evaluation or discharge was erroneous. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board determined 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,



¹ The Board interpreted "it" to mean both the unspecified performance evaluation you wanted removed and your discharge.