



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

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Docket No: 1937-22

Ref: Signature Date

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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 1 April 2022. 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 commenced a period of active duty on 14 December 1995. Your pre-enlistment physical examination on 10 February 1995 and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 21 March 1998, your command issued you a "Page 11" counseling warning (Page 11) for unauthorized absence and disobeying an order from a senior non-commissioned officer. You did not submit a Page 11 rebuttal statement.

On 21 May 1998, your command issued you a Page 11 for your lack of judgment and self-discipline associated with issuing bad check to on-base activities. The Page 11 expressly warned you that a failure to take corrective action could result in administrative action, including separation, judicial or non-judicial proceedings, or limitation on further service. You did not submit a Page 11 rebuttal statement.

On 24 July 1998, pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) of two separate specifications of larceny from an E-4 Marine, forgery of the E-4's name on his stolen checks, and the making/uttering of four checks in the E-4's name without sufficient funds. You received as punishment confinement for seventy-five days, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 25 February 1999, the Convening Authority approved the SPCM sentence as adjudged, except confinement in excess of thirty days was suspended. The Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence on 21 July 1999. Upon the completion of appellate review in your case, on 23 March 2001, you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

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: (a) the incident took place well over twenty years ago, (b) you deeply regret your actions, apologized for your immaturity to the USMC and a fellow Marine, and you took full responsibility for your actions, (c) you have matured greatly since your active duty service, (d) post-service you have had an exemplary career, and (e) on active duty you held a security clearance and earned multiple commendations, letters of appreciation, and a good conduct medal. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

First, the Board noted that you did not earn the Marine Corps Good Conduct Medal (GCM). The GCM requires three years of continuous active duty service without any disciplinary action to be eligible. You enlisted in December 1995 and your SPCM was in July 1998, which made you GCM ineligible and effectively restarted the three-year GCM eligibility clock.

The Board unequivocally did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board determined that your misconduct constituted a significant departure from the conduct expected of a Marine and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your serious misconduct and disregard for good order and discipline clearly merited your BCD. In the end, the Board concluded that you received the correct discharge characterization based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of multiple specifications of serious misconduct and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your character, post-service conduct, and accomplishments but concluded that the mitigation evidence you submitted was insufficient to warrant the relief you seek. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances 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,

4/6/2022

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Executive Director

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