



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: 2129-22

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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 August 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 originally enlisted in the U.S. Marine Corps Reserve (USMCR) and entered a period of active duty from 13 June 1995 to 10 November 1995. On 28 July 2002, you were honorably discharged from the USMCR upon the completion of your required active service. On 12 December 2003, you were commissioned as a Second Lieutenant in the U.S. Marine Corps upon completion of the Officer Candidate Course Leaders Class. On 1 June 2008, you were promoted to the rank of Captain (O-3).

On 16 November 2012, you were convicted at a General Court-Martial (GCM) of violating a lawful order and two specifications of conduct unbecoming an officer and a gentleman. You were sentenced to a dismissal from the Marine Corps. On 8 February 2013, the Convening Authority approved the adjudged GCM sentence. Upon the completion of appellate review in your case, on 7 November 2013, you were dismissed from the Marine Corps.

The BCNR considered your initial petition for relief on 12 May 2021 and recommended to the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN (M&RA)) that your request be denied. On 22 June 2021, the ASN (M&RA) denied your request for relief.

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 the same exact contentions and arguments as outlined in your previous BCNR petition and personal statement, as well as the additional six character reference letters accompanying your current petition. For purposes of clemency consideration, the Board noted you provided the aforementioned advocacy letters but no supporting documentation describing post-service accomplishments.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your GCM, outweighed these mitigating factors. In making this finding, the Board unequivocally determined that your dismissal from the Marine Corps was warranted. The Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Marine Corps as an officer responsible for the care and well-being of enlisted Marines. Thus, the Board found your dismissal to be appropriate under the totality of the circumstances. The Board also noted that your petition for reconsideration was essentially the same as your original BCNR petition with the exception of including multiple character reference letters.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and/or to make any conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that the record clearly reflected your misconduct was deliberate and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also 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. Additionally, 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 that there was no impropriety or inequity in your GCM conviction and sentence, and the Board concluded that your serious misconduct clearly merited your dismissal. In the end, the Board concluded that you received the correct discharge characterization and narrative reason for separation 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 carefully considered any matters submitted regarding your character, however, even in light of

the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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.

Sincerely,

8/23/2022

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Executive Director

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