



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

█  
Docket No: 4338-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 July 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 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 22 September 2003. You were involved in a physical assault, on 5 September 2005, for which you were subsequently charged with violating Article 128 of the Uniform Code of Military Justice for assault consummated by battery after cutting a staff sergeant in the face with knife, a dangerous weapon likely to cause bodily harm. You were tried before General Court-Martial on 7 November 2005 and, pursuant to your plea of guilty, convicted. Your adjudged sentence included forfeitures of pay, reduction to E-1, 2 years confinement, and a Dishonorable Discharge (DD). Your conviction and sentence were affirmed upon appellate review on 31 May 2006. The Clemency and Parole Board reviewed your case on 30 August 2006 with no grant of clemency or reinstatement. You were discharged on 11 February 2007 with a DD.

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 along with associated changes to your narrative reason for separation and reentry code. In addition the Board considered your contentions that your service was otherwise honorable, that you earned the Combat Action Ribbon during your deployment to Afghanistan, that you were only carrying a knife after having been mugged shortly prior to the altercation, that the mugging also contributed to your overreaction when the staff sergeant confronted and provoked you, and that your sentence was unduly harsh based on the combination of matters in extenuation and mitigation during your military service, and that your post-discharge evidence of good character and rehabilitation reflects that you learned from your mistake, that you are a better man than your discharge reflects, and that you deserve a second chance in serving your country. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

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 considered the seriousness of your misconduct that involved using a dangerous weapon to cause serious injury to non-commissioned officer. Although the Board favorably noted your positive inmate evaluations during confinement as well as your career resume, research grants, awards and recognition, the Board concluded that the severity and violent nature of your misconduct outweighs your favorable post-discharge clemency matters. Despite your arguments that this incident was a single lapse in judgement, the Board concluded the consequences of your very serious actions were not excessive and remain appropriate despite your efforts to overcome them with post-misconduct good behavior. As a result, the Board concluded it would be inappropriate to grant you any characterization of service that would indicate your active duty service was in any way Honorable. Similarly, the Board also concluded your narrative reason for separation remains appropriate in light of your severity of your misconduct. Finally, the Board found no reasonable basis to change your reentry code as you remain unsuitable for further military service. Based on these factors, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a DD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, modifying your reentry code or granting clemency in your case. 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 the 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 is attached 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, \_\_\_\_\_

7/26/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]