



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: 5013-22
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 29 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and entered active duty on 12 May 2004. Your pre-enlistment physical examination, on 8 April 2004, and self-reported medical history both noted no neurologic or psychiatric issues.

On 15 April 2005, you received non-judicial punishment (NJP) for failing to obey a direct order while deployed on a guard detachment. A portion of the punishment awarded was suspended.

You did not appeal your NJP. However, the suspended portion of the NJP was later vacated and enforced due to continuing misconduct.

On 7 August 2005, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of assaulting a superior commissioned officer and provoking speeches/gestures. You were sentenced to confinement for six months, forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 13 April 2006, the Convening Authority approved the SPCM sentence, and you were subsequently placed on appellate leave awaiting discharge. Upon the completion of SPCM appellate review in your case, on 6 February 2007, 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 circumstances of the incidents underlying your discharge support an upgrade, (b) you served honorably for three years notwithstanding an isolated occurrence of events, (c) you were an outstanding member and valuable asset of the USMC with unlimited potential, (d) your discharge and re-enlistment code were inequitable, (e) you had an isolated occurrence of events and made an uncharacteristically bad decision due to overwhelming frustration, (f) your offense was a minor act of indiscretion, (g) had you been afforded an opportunity to correct your mistake, a strong argument could be made that no discharge would have been issued, and (h) since your discharge you have continued to serve others, found ways to be self-sufficient, developed yourself into a model citizen, and have actively volunteered in various community outreach events. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Further, the Board unequivocally did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your egregious misconduct constituted a significant departure from the conduct expected of a Marine and was in no way minor in nature, 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 3.1. Marine Corps regulations in place at the



time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior) for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your BCD and RE-4 reentry code.

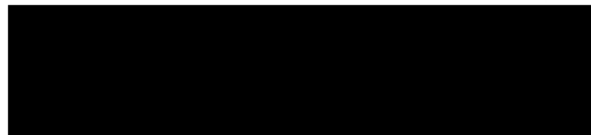
The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' 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 misconduct and total 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. The Board determined you were properly convicted at a SPCM, pursuant to your pleas, of serious misconduct. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments. However, 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 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,

8/8/2022



Executive Director

Signed by: 