



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: 6663-22

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 9 November 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 on 26 June 1981. Your pre-enlistment physical examination, on 12 August 1980, and self-reported medical history both noted no neurologic or psychiatric issues. You reenlisted twice, in both 1989 and 1993, and continuously served in the U.S. Marine Corps without a break in service leading up to your third and final reenlistment that occurred on 2 August 1993.

On 2 February 1996, contrary to your not guilty pleas, you were convicted at a Special Court-Martial (SPCM) of two separate specifications of effecting an unlawful enlistment, two separate specifications of making a false official statement, and four separate specifications of solicitation to commit an offense. You were sentenced to a reprimand and forfeitures of pay for three months. In the interim, you were administratively deleted from the 1995 Gunnery Sergeant (E-7)

selection list due to your SPCM conviction while in a “selected” status. On 6 November 1996 the Convening Authority (CA) approved the SPCM sentence.

However, on 9 October 1997, you were placed in pretrial confinement on suspicion of committing several Uniform Code of Military Justice (UCMJ) offenses including possession of two stolen vehicles and involvement in several armed robberies at ██████████. On 18 March 1998, you were convicted at a General Court-Martial (GCM), contrary to your pleas, of UCMJ offenses that included attempted robbery, conspiracy to commit robbery, conspiracy to commit larceny, larceny, robbery, housebreaking, and interstate transport of stolen property. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for 125 years, total forfeitures of pay, a ██████████ fine, and to be discharged from the Marine Corps with a Dishonorable Discharge (DD). The Convening Authority approved the sentence as adjudged but reduced the period of confinement to seventy-five years and suspended such confinement in excess of forty years.

On appellate review, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) approved the GCM findings and sentence, on 31 October 2002, finding that no error materially prejudicial to your substantial rights was committed. However, on 6 May 2004, the U.S. Court of Appeals for the Armed Forces set aside the NMCCA decision and returned the case to the Judge Advocate General for a potential rehearing.

A GCM rehearing took place between 11 August 2004 and 23 September 2004. Pursuant to your guilty pleas, you were convicted at the GCM of the same exact charges and specifications that were tried at the first GCM in March 1998. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for thirty-five years, total forfeitures of pay, and to be discharged from the Marine Corps with a DD. The Convening Authority approved the GCM sentence as adjudged but suspended confinement in excess of twenty years. Upon the completion of GCM appellate review in your case, on 25 February 2008, you were discharged from the Marine Corps with a DD and assigned an RE-4 reentry code.

On 29 October 2009, you were issued a “Correction to DD Form 214, Certificate of Release or Discharge from Active Duty” (DD Form 215) to reflect certain administrative changes to correct certain erroneous dates as listed on your DD Form 214 for the period ending 25 February 2008.

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 contention that: (a) it was an injustice to change certain dates through the issuance of a DD Form 215, and (b) the DD Form 215 was erroneous because the setting aside of your GCM in 2004 restored you to all rights and privileges as if you had never been tried. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined that your Marine Corps service records contain no known errors. The Board noted that the misconduct forming the basis of your DD technically occurred during your last enlistment period that began on 2 August 1993. Thus, the Board concluded that administrative changes to a DD Form 214 are customarily made to reflect that your previous enlistments were completed without any significant adverse disciplinary action. The Board was aware that the Department of the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments that were not separately documented with a DD Form 214.

However, the board noted that the DD Form 215 as issued in your case is correct in all respects. The DD Form 215 properly states “Continuous Honorable Active Service from 19860123-19930801.” The terminal date of 1 August 1993 is correct, not the date of your court-martial rehearing on 23 September 2004 as you contend. The terminal date of 1 August 1993 as noted on your DD Form 215 properly represents the end of your last enlistment that was free and clear of any adverse disciplinary action.

The Board also noted, contrary to your contentions, that blocks 12a and 12c on the DD Form 215 are correct as well. The Board observed that the revised date in block 12a merely corrects an error to properly note the beginning of your second enlistment on 23 January 1986,¹ and block 12c now reflects your correct total active service minus any “time lost” spent in confinement. The Board noted that time spent in confinement does not count towards creditable service for retirement purposes and must be subtracted day-for-day from your February 2008 discharge date. The calculation is noted in the change to block 29 as listed on the DD Form 215. 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 changing your record or granting you relief as a matter of clemency or equity. 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

¹ The Board noted that you were honorably discharged at the end of your first enlistment and you were issued a separate DD Form 214 covering such enlistment from 26 June 1981 through 22 January 1986. Thus, the Board determined that the correct date as noted in block 12a of your DD Form 215 should be 23 January 1986.

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,

11/28/2022

[REDACTED]

Executive Director

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