



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

█  
Docket No: 7230-22  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 22 December 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 previously petitioned the Naval Discharge Review Board for relief and were denied on 19 November 1976. This Board also denied your request for an upgrade to your discharge on 2 May 1978.

You enlisted in the U.S. Marine Corps and began a period of active duty on 26 February 1971. You received non-judicial punishment (NJP) on 26 July 1972 for wrongfully communicating a threat. You did not appeal the NJP.



On 5 November 1972, you were arrested by [REDACTED] authorities for strangling and raping a [REDACTED] national. You were found guilty by a [REDACTED] court on 27 September 1973 for forcible rape and sentenced to three years forced labor. As a result, you were notified for separation for misconduct due to civilian conviction and elected to consult with counsel and exercise your right to an administrative board. On 29 November 1973, the administrative board found that the evidence supported your discharge based on your civil conviction and recommended you be discharge with an undesirable (Other than Honorable (OTH)) discharge. The CO concurred with the board recommendation and forwarded your case to the Separation Authority (SA). On 7 January 1974, the SA concurred with the recommendation and directed your discharge upon completion of your confinement by [REDACTED]. On 1 May 1975, you were so discharged.

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 implied contentions that your civil conviction was unjust due to your inability to request or call witnesses at your trial. 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. Specifically, the Board determined that your misconduct, as evidenced by your conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect your rape of a [REDACTED] had on the Marine Corps and the United States. Additionally, the Board was not persuaded by your arguments regarding the lack of due process at your civilian trial or the administrative board. The Board noted that you did not provide any evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH discharge. 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 an upgraded characterization of service 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 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,

1/14/2023

[REDACTED]