



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: 8736-22
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 16 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 enlisted in the U.S. Marine Corps and began a period of active duty on 23 April 2012. On 12 November 2014 you were issued a counseling warning regarding your insubordinate conduct and disrespect to a gunnery sergeant. You were again issued a counseling warning, on 18 November 2014, regarding your inappropriate fraternization with a subordinate Marine within your command. Finally, you were found guilty at summary court-martial (SCM) for making a false official statement and dereliction of duty. You were awarded confinement, forfeiture and reduction in rank to E-1. Five months later, you separated at the expiration of your enlistment, on 16 May 2016, with an Honorable discharge and a 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, your desire for a new reentry code and contention that you were given a negative reentry code by parties who wrongly court-martialed you. You claim that your court-martial was overturned, your rank was reinstated, and you were given back pay for your time in the brig. 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the lack of any evidence to support your contentions that your SCM was set aside or that you were somehow treated unjustly. Further, the Board determined the commanding officer has the discretion to issue a RE-4 reentry code at discharge if a Marine's conduct displays a lack of potential for future military service. In the Board's opinion, based on your record of misconduct that included a SCM and counselings, your commanding officer did not abuse his discretion in assigning you a RE-4 reentry code. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a RE-4 reentry code. 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 reentry code or granting 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 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,

1/11/2023

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Executive Director

Signed by: █