



**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. 1322-23  
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 7 April 2023. 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 enlisted in the U.S. Navy and entered active duty on 18 November 2002. On 6 April 2005, your command issued you a "Page 13" retention warning (Page 13) documenting your failure to obey a lawful order, and misbehavior of a sentinel or lookout. The Page 13 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 28 June 2007, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of: (a) unauthorized absence, (b) failure to obey a lawful order or regulation, (c) wrongful appropriation, (d) assault consummated by a battery, (e) assault, (f) unlawful entry, (g) drunk and disorderly conduct, and (h) two separate specifications of communicating a threat to kill. You were sentenced to confinement for ten (10) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct

Discharge (BCD). On 25 October 2007, the Convening Authority approved the SPCM sentence as adjudged, but suspended any confinement in excess of 140 days in accordance with the terms of your pretrial agreement. On 15 July 2008, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence as approved by the Convening Authority. Upon the completion of SPCM appellate review in your case, on 4 December 2008, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 9 October 2014, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief. The NDRB determined that your discharge was proper as issued and no change was warranted.

On 15 July 2021, the NDRB granted you partial relief and upgraded your discharge to General (Under Honorable Conditions) (GEN). The NDRB found the original characterization of service assigned to you was inequitable given your overall record of service and the isolated nature of your misconduct. The NDRB found the evidence of record and your post-service achievements did contain sufficient mitigating factors to offset the seriousness of the offenses for which your BCD was awarded. The NDRB noted your successful post-service accomplishments to include obtaining a bachelor's degree, a juris doctor degree, and becoming a member of the ██████████ bar in good standing. The NDRB also noted that your misconduct was not a pattern of willful and persistent behavior over your enlistment, but essentially a singularly drunken and pugnacious night in a foreign country. After a careful review of your service record and post-service conduct, by a majority vote, the NDRB voted to upgrade your discharge to GEN and change the narrative reason for separation to "Secretarial Authority." The NDRB did not change the reentry code.

However, on 28 February 2022, Director, Secretary of the Navy Council of Review Boards, in his role as the designated Secretarial Review Authority (SRA), disagreed with the NDRB decision and found your original characterization of service proper and equitable, and consistent with the characterization of discharge given other similarly situated service members. The SRA noted that although your misconduct was an isolated event in that it occurred on a single evening, the severity of certain serious offenses, even though isolated, warranted your separation from the Navy to maintain proper order and discipline. The SRA also did not agree that your post-service conduct sufficiently mitigated the seriousness of the offenses underlying your BCD. The SRA noted that your actions, which included assaults on two civilians in Bahrain and threats to kill them, were egregious and undermined the good order and discipline of the command to which you were assigned. The SRA concluded by opining: "While I considered the Applicant's overall record of service, I did not find it mitigated his actions to the extent a General (Under Honorable Conditions) characterization of service would be warranted." Ultimately, the SRA determined the NDRB decision was not supported by the evidence of record, set aside the decision, and concluded that your BCD characterization and narrative reason for separation shall remain unchanged.

On 22 July 2022, this Board denied your initial application to this Board. The Board determined there was insufficient evidence of error or injustice to warrant relief in your case.

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 discharge upgrade and contentions that: (a) the decision to set aside the NDRB decision was unjust, and the collective decision of the NDRB five-member panel should be reinstated, (b) your BCD was PTSD related, (c) you had three friends killed in action, (d) you were permanently injured on your first deployment and you still volunteered to go back to the Middle East, (e) you now have \$400,000 in student loan debt and are physically impaired, (f) you have been without healthcare for years, (g) you are homeless and unable to afford/qualify for a mortgage or rent because your discharge is employment limiting, (h) you have been, at times, suicidal since your discharge and denied Department of Veterans Affairs (VA) assistance for the last fifteen years, and (i) a discharge upgrade will facilitate help from the VA and get your life back on track both personally and professionally. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations.

The Board noted that there was no evidence you were diagnosed with a mental health condition on active duty, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health condition, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health condition. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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. 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 was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct overseas involving host national victims. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout

the entire enlistment, the conduct or performance of duty reflected by only a single incident or series of misconduct may provide the underlying basis for discharge characterization. Moreover, 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. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

4/18/2023

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Executive Director