



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

■  
Docket No. 1493-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 March 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 this 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.

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 United States Marine Corps and commenced a period of active duty on 3 September 1996. On 11 December 1998, you were found guilty at General Court Martial (GCM) of violating Uniform Code of Military Justice (UCMJ) Article 81, for two specifications of conspiring to wrongfully dispose 1.25 lbs of C-4 explosive material, Article 108, for wrongfully disposing of said material, and Article 134, for wrongfully receiving and possessing said material. The court sentenced you to 30 months confinement, forfeitures of pay, reduction in rank to E-1, and a Bad Conduct Discharge (BCD).

On 21 October 1999, the Navy Clemency and Parole Board declined clemency, but approved parole on 6 December 1999, with full-term release date of 14 September 2000, if violated. On 6 December 1999, you were released from confinement and transferred onto appellate leave pending your case review. On 23 March 2000, the Navy and Marine Corps Court of Criminal

Appeals completed their appellate review and, on 25 July 2000, the Court of Appeals for the Armed Forces declined additional review. Ultimately, on 27 January 2003, you were discharged from the Marine Corps with a BCD as issued by the court and assigned an RE- 4 reenlistment 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: (1) your youth at the time of the misconduct, (2) the fact that you took responsibility for your mistakes and fully cooperated with the investigation, and (3) your post-service conduct and character. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it placed both you and others in your unit in substantial danger of injury or death. The Board highlighted that there is thorough training about the inherent dangers found at the range, which fully cover safety and proper conduct under such conditions. The Board determined that your misconduct was not only in violation of this training, but also contrary to Marine Corps values and policy. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command.

The Board found that your active duty 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 otherwise not be held accountable for your actions. The Board felt that you received advice from qualified counsel throughout the court martial process and were aware of your rights. The Board commends you for your post-service accomplishments, however, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court.

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 VA benefits, or enhancing educational or employment opportunities. Based on these factors, 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. 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,

3/25/2023

