



**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. 3874-23

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.

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 26 June 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, 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 United States Marine Corps and commenced a period of active duty on 25 February 1984. During your first few years in service, you received two formal administrative counseling chits for demonstrating poor judgment and failing to follow standard operating procedures.

On 9 September 1988, charges were referred to General Court Martial (GCM) on violations of Uniform Code of Military Justice (UCMJ) Article 81, for conspiracy with three other Marines to commit larceny of ammunition, Article 121, for stealing ammunition, pyrotechnics, and explosives

(which included blasting caps, 1 case of detonating cord, 1 case of smoke grenades, 1 case of incendiary grenades, 1 case of pop-up flares, 2 cases of 9MM ammo, and 1 case of 45MM ammo), and Article 134, for unlawfully entering the ordnance transfer point. On 12 September 1988, the charge sheet was served on you.

Prior to service of the charge sheet, with the assistance of detailed defense counsel, you entered into a Pre-Trial Agreement (PTA) on the date of referral. Therein, you agreed to plead guilty to all of the listed charges and waive your Article 32 hearing in exchange for limitations on the imposed sentence. On 3 October 1988, you were found guilty at GCM of all charges and sentenced to 2-years confinement, reduction in rank to E-1, forfeitures of pay, and a Bad Conduct Discharge (BCD). On 21 November 1988, the Convening Authority approved the sentence, but suspended all confinement in excess of 12 months per Part II of the PTA. The punitive discharge was not limited by the PTA.

On 15 February 1989, the Navy Court of Military Review affirmed the findings and sentence in compliance with Article 66 of the UCMJ. On 28 April 1989, after being advised by a Judge Advocate General (JAG) officer regarding the consequences of your action, you waived your right to departmental level clemency review by the Naval Clemency and Review Board. On 21 July 1989, you were placed on involuntary appellate leave awaiting completion of the appellate review of your punitive discharge. Ultimately, you were discharged from the service on 8 November 1989 with a BCD as issued at GCM.

You previously requested relief through the Board for Correction of Naval Records (BCNR) and were denied relief on 14 January 1994.

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 arguments of legal error, specifically that: (1) you signed the PTA on 9 September 1988 but were not served the referred charge sheet until 12 September 1988, (2) the charges listed on the PTA do not match the charges on the referred charge sheet, (3) you were not informed of all the charges before the trial was held, therefore the JAGs failed to follow the proper prosecutorial process, resulting in prosecutorial malfeasance, (4) a PTA cannot be entered into before the charge sheet is served upon the accused and therefore your waiver of the Article 32 hearing was based on a faulty PTA, and (5) due to the above legal errors, the court martial was conducted and approved in error. For purposes of clemency and equity consideration, the Board noted you provided a resume describing 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 conviction at GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it put you and your fellow Marines at risk. Further, the Board also considered the negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy. The Board felt that the Convening Authority already granted you significant clemency by accepting your PTA and limiting your confinement

accordingly. As a result, 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 does not have the authority to overturn court martial convictions, but can grant clemency on the affirmed sentence if in the event that an error or injustice is identified, or as a matter of clemency. After thorough review, the Board did not find an error or injustice in your case that would warrant relief. First, the Board felt that you were sufficiently notified of the charges that formed the basis of your PTA, even if you were not served the official charge sheet, as the charges were listed within the PTA itself. The Board found that you received comprehensive advice from your detailed counsel prior to entering the PTA. Within the PTA, you specifically state that:

for good consideration and after consultation with my counsel, I agree to enter a voluntary plea of GUILTY to the charges and specifications as indicated below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me.... That I am satisfied with my defense counsel in all respects and consider him/her qualified to represent me in this court-martial; That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty; That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved for any reason; That I understand that I may ask permission to withdraw my plea of guilty at any time before sentence is announced, and that the military judge may, at his discretion, permit me to do so...

The Board highlighted that you attest to understanding the charges and specifications, which are the same as listed on the referred charge sheet, and the benefit you would receive in sentencing limitations in exchange for your plea of guilt. The Board also highlighted that you could have withdrawn your plea any time prior to the announcement of the sentence, to include after receipt of the referred charge sheet on 12 September 1988. Instead, after thorough questioning by the judge during the guilty plea, the judge found you provident and accepted your plea. Not only did you not withdraw your guilty plea, you received the benefit of the PTA when your sentence was limited to one year confinement, despite the court issuing a two year sentence. The Board did not identify a legal error or prosecutorial malfeasance related to the disparity between the dates of the PTA and service of the charge sheet, but even if there was legal error, the Board concluded that such error would have been waived by you and your counsel after not only failing to make a timely objection, but also after receiving the benefit of the PTA.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. 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,

6/27/2023

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Executive Director

Signed by: █