



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

█  
Docket No. 6288-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 25 September 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).

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 (USMC) and began a period of active duty on 10 April 1978. As a result of your Meritorious Masts for your outstanding job performance, you were promoted on 18 December 1980 and 6 March 1981, respectively. On 20 August 1981, you received your first nonjudicial punishment (NJP) for failing to go to morning formation. On 22 September 1981, you received a second NJP for a 10-day period of unauthorized absence (UA). On 9 March 1983, you received a third NJP for wrongfully using and possessing marijuana and were awarded a reduction in rank to E-3 which was suspended for three months. On 15 April 1983, your suspended reduction in rank was vacated as a result of your continued misconduct. On 23 April 1983, you were counseled concerning your performance deficiencies

and chose not to make a statement in rebuttal. On 14 October 1983, you were found guilty at a general court-martial (GCM) of a 42-day UA, disrespect towards an officer, willfully disobeying a commission officer, two specifications of striking a commissioned officer, disobeying a lawful order, three specifications of larceny, four specifications of communicating a threat, two specifications of receiving stolen property and accessory after the fact. You were sentenced to confinement at hard labor for six years, to forfeit all pay and allowances, to be reduced in rank to E-1, and to a Dishonorable Discharge (DD). Your sentenced was subsequently affirmed, ordered executed, and, on 16 January 1985, you were discharged with a DD as a result of a court-martial.

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 Memos. These included, but were not limited to, your desire to upgrade your discharge and to have your rank of E-4 restored. You contend that: (1) you completed four years of service honorably and were meritoriously promoted, (2) while on an enlistment extension you became the target of a group of officers who accused you of something of which you were innocent, (3) after retaining military counsel and thinking you would receive help your counsel instead negotiated a deal for you to plead guilty and receive nine months of confinement or nine years in federal prison, (4) you were young and did not know better, (5) your attorney never informed you of your Dishonorable Discharge characterization of service, (6) a witness who could have cleared your name was not made available, and (7) you intended to make the military a career. For the purposes of clemency and equity, the Board considered in its entirety the matters you submitted in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrants relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and GCM, 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 also considered the likely negative effect your conduct had on the good order and discipline of your command. Finally, the Board noted that you provided no evidence to substantiate your contentions of unfair treatment or denial of due process. Ultimately, the Board relied on the presumption of regularity in determining your GCM guilty pleas were made knowingly and voluntarily with the assistance of legal counsel. 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. 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 the 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 is attached 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,

10/12/2023

