



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. 6611-23

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 1 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).

You enlisted in the U.S. Marine Corps and began a period of active duty service on 2 August 2004. Your enlistment physical examinations, on 6 June 2003 and 15 April 2004, and your self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On or about 8 August 2005, you suffered shrapnel wounds to your left leg from an IED explosion in █
█, and you received the Purple Heart Medal (PHM).

On 25 May 2006, you received non-judicial punishment (NJP) for violating a lawful order when you participated in the hazing of four Marines in your charge. You did not appeal your NJP.

On 18 August 2006, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of two separate housebreaking specifications, and the larceny of military property with a value of approximately \$19,600. The military property you stole included, but was not limited to: eleven flak jackets, thirteen pairs of SAPI plates, ten e-tools and carriers, twenty medical kits, twenty ponchos, and eight neck gaiters. You were sentenced to confinement for ten months, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 16 November 2006 the Convening Authority (CA) approved the SPCM sentence as adjudged, except suspended confinement in excess of 180 days. Following CA approval of the SPCM sentence, you were placed in an involuntary appellate leave status on 19 January 2007. On 8 March 2007, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence. Upon the completion of SPCM appellate review in your case, on 23 May 2007, you were discharged from the Marine Corps with a BCD and assigned an RE-04 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 discharge upgrade and changes to your narrative reason for separation and reentry code. You contend that: (a) the Board should take into consideration your PHM when determining whether to upgrade your discharge, (b) you have grown considerably since the mistakes of your youth, (c) you only wish to upgrade your discharge in order to pursue a career in law enforcement and continue giving back to your community, (d) your BCD is hindering you from pursuing a career in law enforcement, (e) you made a mistake in your youth but have turned your life around, (f) you have grown considerably since your discharge, and become a dedicated husband and father, a devoted Christian, a committed member of your community, a business owner, and a volunteer firefighter, and (g) you have earned numerous personal/professional certifications, and (h) seventeen (17) individuals have submitted advocacy letters explaining your remorse, personal growth, and integrity. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.8 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military

behavior), for a fully honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your cumulative misconduct.

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. 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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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, _____

9/14/2023

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Executive Director

Signed by: █