



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. 6692-23
Ref: Signature Date

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Dear █

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 November 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active duty on 9 January 1979. After two previous periods of Honorable service, you began a third period of active duty service on 23 August 1984. On 19 September 1988, you were convicted by general court martial (GCM) of violation of a lawful order by writing personal letters to a recruit and having them delivered, meeting with the recruit at the residence of another noncommissioned officer located off base, meeting for social purposes, with recruit at the residence of other NCO, where you consumed alcoholic beverages in the presence of the recruit, and thereafter using your own POV to drive the Recruit back to the Navy Hospital, █, █, committing sodomy with recruit, and indecent

acts, and obstruction of justice by impeding a Naval Investigative Service investigation into the affair. You were found guilty and sentenced to a Dishonorable Discharge (DD) characterization of service, reduction to the inferior grade of E-1, confinement at hard labor for a period of 14 months, and forfeiture of pay in the amount of \$350.00 for a period of 14 months. On 13 December 1988, your commanding officer recommended permanent relief of your drill instructor duties and voidance of your 8155 MOS. On 3 February 1989, you declined your right to a departmental clemency review by the Naval Clemency and Parole Board.

On 10 February 1989, in accordance with a pre-trial agreement, the convening authority mitigated the DD to a Bad Conduct Discharge (BCD) characterization and suspended the forfeitures and confinement in excess of six months for a period of six months. Thereafter, you were placed on involuntary appellate leave.

After initially setting aside your sentence and ordering a rehearing, on 21 December 1994, the Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence. On 23 August 1995, you were discharged with a BCD.

On 13 January 1999, this Board denied your previous request for a discharge characterization upgrade.

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) you have a nice home build from the ground and have worked very hard to get what you have now, (b) if God can forgive us for all our sins, then humans can do the same, (c) you are asking the Board to consider your request as you have already paid the price, (d) you have loss your right leg as a result of poor military doctor, and (e) you have worked hard to get your bachelor's in criminal justice. In addition, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 15 August 2023 letter requesting supporting evidence for your claims. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 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. Additionally, the Board considered the likely negative impact it had on the good order and discipline of your unit. 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 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,

11/28/2023

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Executive Director
Signed by: █