



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. 7401-23
Ref: Signature Date

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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 father's 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 20 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.

After two period of honorable service, you reenlisted in the Marine Corps on 9 August 2000. On 5 June 2003, a general court-martial (GCM) convicted you of violating UCMJ Articles 81, 108, 121 and 134. As a result, you were sentenced to confinement for 42 months, reduction to E-1, and a Dishonorable Discharge (DD). After the DD was approved at all levels of review, on 20 July 2006, you were so discharged.

Unfortunately, the documents pertinent to your GCM conviction are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate

of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 20 July 2006 with a Dishonorable Discharge characterization of service, your narrative reason for separation is "Court-Martial," your separation code is "JJD," and your reenlistment code is "RE-4."

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 to upgrade your discharge and contentions that you have been an honorable member of society, a business owner who has trained and managed over 18 employees and is responsible for the security and processing of over \$2,000,000 worth of clothing inventory, and a family man. 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 conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. The Board also felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a DD. While the Board considered your assertions of 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. 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,

10/5/2023

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Executive Director

Signed by: █