



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

█  
Docket No. 8394-23  
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 27 October 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 to 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 Navy and began a period of active duty on 8 June 1993. The following day, you were administratively counseled that you would be retained in spite of a defective enlistment due to your failure to disclose pre-service offenses or arrests related to: possession of stolen property, for which you received 6 months' probation, and breaking and entering, which was dismissed. You served without further incident and reenlisted on 31 August 1996.

You received a personal achievement award on 23 February 1999 and were recognized as the 4th quarter sailor of the quarter for █. However, you were subsequently tried and convicted by a court-martial at an unknown date for unknown offenses, with a sentence that presumptively included a Bad Conduct Discharge (BCD) as documented by your discharge record. Unfortunately, the documents pertinent to your discharge 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 7 April 2005 with a BCD characterization of service, your narrative reason for separation is "Court Martial," your separation code is "KJD/902," 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 "so that firearms rights can be reinstated" and your contentions that you have been working in the firearms industry for 20 years since your discharge and have never encountered an issue until a recent meeting with the Bureau of Alcohol, Tobacco, and Firearms in relation to your records with the Federal Bureau of Investigation and Naval Criminal Investigative service reflecting that you are a "prohibited individual." You assert that your record has remained clean since your discharge but that your business and livelihood are at risk if you do not receive an upgraded discharge. For purposes of clemency and equity consideration, the Board noted you provided documentation related to Federal and State Explosive Licenses.

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 court-martial conviction, outweighed these mitigating factors. Unfortunately, the Board observed that your official military personnel file does not contain records documenting the nature of the offenses for which you were convicted by court-martial and punished with a BCD. Absent such information, the Board must apply a presumption of regularity in assessing whether your discharge was either erroneous or unjust. Additionally, the Board would need such information to determine whether potential clemency considerations are sufficient to outweigh the severity of your misconduct. Further, with respect to your specific concerns regarding licensing or your identification as "prohibited" with respect to law enforcement databases, the Board notes that its purview is limited to correcting service records, and the record of your conviction with respect to law enforcement agencies would be a separate matter beyond the scope of the Board's grant of authority. 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. 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 presumptively serious nature of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

With respect to potentially submitted the records pertaining to your court-martial trial if you choose to seek reconsideration, the Board believes that the below information may assist you with such effort. The Navy Judge Advocate General website for Freedom of Information Act requests may be accessed at: <https://www.jag.navy.mil/foia> which indicates that, to request a record of trial or courts-martial records, you may submit your request to OJAG Code 40 at [foiamiljust@navy.mil](mailto:foiamiljust@navy.mil) via email.

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, \_\_\_\_\_

11/20/2023

