



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

█  
Docket No. 2905-24  
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 15 April 2024. 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 Marine Corps and commenced active duty on 14 October 1993. On 4 May 1995, you received non-judicial punishment (NJP) for wrongful damage to the property of a civilian hotel in a foreign country and drunk and disorderly conduct of a nature to bring discredit upon the Armed Forces of the United States. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 15 November 1995, you received NJP for failure to go to your appointed place of duty.

On 30 January 1996, you were convicted at Special Court Martial (SPCM) of two specifications of larceny, for stealing military property, including: thirty (30) 12 gauge shotgun 00 buckshot rounds, forty (40) 5.56mm tracer rounds, twenty (20) 7.62mm match rounds, one (1) riot CS1 hand grenade, one (1) yellow smoke hand grenade, one (1) red smoke hand grenade, one (1) surface tip flare, and two (2) percussion artillery primers (total value \$115.98), and fifty (50) .22

caliber long rifle ball rounds, fifty (50) 9mm ball rounds, ten (10) .50 caliber linked ball rounds, one (1) 40mm green star parachute round, one (1) 40mm red star parachute round, one (1) 40mm red smoke ground marker round, two (2) 40mm green smoke ground marker rounds, one (1) 40mm yellow smoke ground marker round, two (2) 40mm white star parachute rounds, one (1) 40mm tactical CS round, and one (1) artillery flash simulator (value \$193.27). You were sentenced to forfeitures, confinement, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 12 September 1992.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB granted your request based on clemency, on 3 December 2009, and your characterization of service was upgraded to Other Than Honorable (OTH) conditions.

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 change your discharge characterization of service and your contentions that you have continued to serve your county as a DoD contractor for ten years and in your current service as a Federal civilian employee, you have been awarded treatment by the Department of Veterans' of Affairs (VA) under the PACT act, and you deserve VA compensation due to cancer caused by service. For purposes of clemency and equity consideration, the Board considered your statement, training certificates, gun licenses, marriage registration, performance appraisal, and medical documentation you provided.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, concluding with larceny of a considerable amount of government-owned explosives that ultimately resulted in your BCD. The Board believed you already received a considerable amount of clemency when the NDRB granted you a characterization of service upgrade. Finally, 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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,

5/8/2024

