



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

██████████  
Docket No. 7964-24

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 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 reconsideration application on 15 November 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).

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.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 19 August 2003. Your enlistment physical examination, on 19 September 2002, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 28 July 2004, you received non-judicial punishment (NJP) for your larceny of DVDs from the Base Exchange. You did not appeal your NJP.

On or about 4 December 2007, you were convicted at a General Court-Martial (GCM) of: (a) assault with intent to commit rape, and (b) forcible sodomy. You were sentenced to confinement for multiple years,<sup>1</sup> a reduction in rank to Private (E-1), and to be discharged from the Marine Corps with a Dishonorable Discharge (DD). On or about 18 December 2007, the Convening Authority approved the GCM findings and sentence. Upon the completion of GCM appellate review in your case, on 14 May 2010, you were discharged from the Marine Corps with a DD and were assigned an RE-4 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: (a) you still have nightmares about your time in Iraq which causes severe mood swings and panic attacks, and you stopped taking wellbutrin because you didn't like how it made you feel, (b) based on the evidence you do not believe you committed a crime because you adhered to her consent even though you were both intoxicated, (c) you were not given a fair trial to defend yourself because of ineffective legal counsel, (d) you did not know that you could even make an appeal to this board until just a few months ago, and (e) you were hesitant to even share your story because you just figured it would be another dead end, but you know starting here is the road back to normalcy. For purposes of clemency and equity consideration, the Board considered the totality 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 concluded that you did not provide credible and/or convincing evidence to substantiate or corroborate your sweeping evidentiary, due process, or ineffective assistance of counsel contentions. Instead, the Board determined that you were presumably found guilty of your serious GCM offenses because you were indeed guilty, and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from a final GCM conviction occurring over twenty-three years ago.

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.

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<sup>1</sup> The Board noted Block 29 of your DD Form 214 showed "Time Lost" while spent in confinement from 4 December 2007 through 14 May 2010, a confinement period spanning 893 days.

However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct.

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, 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,

11/25/2024

