



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

[REDACTED]
Docket No. 8277-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 8 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).

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 4 February 1986. Your enlistment physical examination, on 15 July 1985, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your last reenlistment occurred on or about 2 May 1992.

On 2 June 1993, contrary to your pleas, you were convicted at a Special Court-Martial (SPCM) of: (a) being an accessory after the fact to a certain offense under the UCMJ, (b) failing to obey a lawful general order, and (c) two (2) separate specifications of obstruction of justice. Your accessory after the fact offense centered around your deliberate actions to hinder the prosecution and punishment of another Marine who shot the tires of a vehicle and/or assaulted an [REDACTED]

██████████ parking lot. You assisted said Marine by disposing of the .380 pistol used by said Marine during the ██████████ shooting incident at said Marine's request. You were sentenced to confinement for ninety (90) days, a reduction in rank to Private First Class (E-2), forfeitures of pay, and to be discharged from the Marine Corps with a Bad Conduct Discharge (BCD). On 3 September 1993, the Convening Authority (CA) approved the SPCM sentence, except suspended all confinement in excess of forty-nine (49) days, the reduction in rank to E-2, the BCD, and all forfeitures of pay. However, on or about 5 July 1994, the CA vacated certain suspended SPCM punishment and executed both the reduction in rank to E-2, and the BCD.

On 17 February 1995, the U.S. Navy-Marine Corps Court of Criminal Appeals concluded and ruled that they were convinced beyond a reasonable doubt of your guilt of the offenses of which you were convicted and approved the SPCM guilty findings and sentence. On 30 June 1995, the U.S. Court of Appeals for the Armed Forces denied your petition for a grant of review. Upon the completion of SPCM appellate review in your case, on 22 November 1996, you were discharged from the Marine Corps with a BCD 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, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) your SPCM punishment has long outlasted its utility, (b) you deserve to be recognized for your years of service and no longer have your reputation tainted by this one mistake, and (c) especially when considering your clean record since separation, you are deserving of your requested corrections. 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 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. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. In making this finding, the Board took into consideration the likely negative effect your conduct had on the good order and discipline of your unit.

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,

11/24/2024

