



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

██████████
Docket No. 832-25
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 application on 21 February 2025. 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 originally enlisted in the U.S. Navy and began a period of active duty service on 27 October 1980. Your enlistment physical examination, on 13 August 1980, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your last reenlistment occurred on 30 November 1994.

On 1 December 2000 you were convicted at a General Court-Martial (GCM) of: (a) three (3) separate specifications of rape/carnal knowledge, and (b) two (2) separate specifications of violating UCMJ Article 134. You were sentenced to confinement for nine (9) years,¹ a reduction in rank to Seaman Recruit (E-1), total forfeitures of all pay and allowances, and to be discharged from the Navy with a Dishonorable Discharge (DD).

The U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the GCM findings and sentence as approved by the Convening Authority. On ██████████ U.S. Court of Appeal for the Armed Forces (CAAF) denied your petition for a grant of review. On ██████████ CAAF denied your request for rehearing. Upon the completion of GCM appellate review in your case, on ██████████ you were discharged from the Navy with a DD and were assigned a RE-4 reentry code.

On ██████████ the U.S. Supreme Court (USSC) denied your petition for a writ of certiorari. On ██████████ the USSC denied your petition for a rehearing.

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 were unlawfully discharged in violation of UCMJ Article 71(c)(1) after a biased review by a corrupt, conflicted court of review in violation of Article 66(c), (b) you were discharged before a final USSC judgment on ██████████ (c) you were unconstitutionally denied review of your military proceedings in pleading between 2008 and 2024, and (d) your only hope of correcting these injustices rest before this board and these errors would not be proper to let them stand under the circumstances. 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 evidence to substantiate or corroborate your due process contentions. The Board determined that your conviction was upheld on appellate review because you were 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 nearly eighteen (18) years ago.

¹ The Board noted Block 29 of your DD Form 214 showed "Time Lost" while spent in confinement from 1 December 2000 through 13 March 2007, a confinement period spanning 2,294 days.

The Board determined that your argument you were discharged prior to a final conviction to be baseless. The Board noted that in accordance with UCMJ Article 71(c)(1), your rape/carnal knowledge conviction was final when CAAF denied your petition for a rehearing on 11 October 2006.² The Board determined that the controlling language in your case is contained in UCMJ Article 71(c)(1)(B). The Board noted that the UCMJ Article 71(c)(1)(B) and UCMJ Article 71(c)(1)(C) provisions are drafted as “either/or,” and not inclusive. Thus, the Board concluded that once CAAF denied your petition for a rehearing on 11 October 2006, your conviction was final and that your DD on 13 March 2007 was factually and legally appropriate in accordance with UCMJ Article 71(c)(1)(B). The Board determined that your filing of a petition for a writ of certiorari with the USSC for purposes of attempting to continue appellate review of your GCM conviction had no bearing on your 13 March 2007 DD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of reinstatement to service, or 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 GCM of serious misconduct. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans or VA benefits or enhancing educational or employment opportunities. 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 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 liberally and 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.

² Article 71(c)(1) provides, in part: “A judgment as to the legality of the proceedings is final in such cases when review is complete by a Court of Criminal Appeals and... (B) such a petition is rejected by the Court of Appeals by the Armed Forces; or (C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and... (ii) such a petition is rejected by the Supreme Court.”

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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,

3/10/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]