



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

■
Docket No. 8688-25

Ref: Signature Date

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Dear ■■■■■■■■■■

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.

Because your application was submitted with new contentions or documents not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 21 April 2006. 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.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 13 January 2005. In your initial application, you contended that your discharge unjust because a retrial was held, your sentence was set aside, and the incident happened over twenty-five years ago. On 26 March 2005, after it denied your initial application for lack of evidence supporting your contentions, this Board received supporting documents from you indicating the U.S. Navy-Marine Corps Court of Criminal Appeals set aside the finding of attempted murder in your General Court-Martial (GCM) conviction. However, the appeals court declined to set aside your findings of guilt for conspiracy to commit aggravated assault, aggravated assault with a firearm, and wrongful discharge of a firearm, and order a new hearing for resentencing. On 30 May 1997, a sentencing rehearing resulted in a new sentence of three years, six months of confinement, forfeitures of all pay and allowances, and a Dishonorable Discharge (DD). Your punitive discharge was affirmed after appellate review and eventually executed. Other than the

new evidence discussed above, the summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

In your current application to this Board, you express a desire for your discharge character of service be upgraded and contend that your discharge was in error, was over twenty-eight years ago, and does not reflect the person you are today. You also submitted a letter from the American Legion ■■■■■ that argues you merit the requested relief because your "charges were dropped" and systemic discrimination against men of color existed at the time of your service.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately discharged with a DD based on your GCM guilty pleas, conviction, and sentence. The Board noted you admitted to committing the misconduct that formed the basis of your GCM conviction and sentence. Further, while the Board considered your arguments regarding the set aside of your attempted murder charge, the Board considered that the remaining charges were affirmed and the resentencing hearing still resulted in substantiate punishment, which included the DD. Therefore, the Board determined the presumption of regularity applies to your DD and no error exists with your record.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service to include service highlights, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your claim of disparate treatment between you and others, the harshness of your punishment, the evidence you provided in support of your application, the advocacy letter you provided, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board determined that the violence associated with your misconduct was significant and continues to support your punitive discharge. Further, the Board was not persuaded by your arguments that systemic discrimination contributed to your sentence or the circumstances of your misconduct. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. In making this finding, the Board considered that your GCM conviction received multiple appellate reviews and affirmed as appropriate. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. While the Board considered the length of time since your misconduct, they determined the severity of your misconduct outweighed any mitigation resulting from it. While the Board acknowledged the likely hardships you endured as a result of your punitive discharge, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

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,

5/20/2026

