



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

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Docket No: 4181-21
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 November 2021. 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).

On 30 October 1982, you reenlisted in the Marine Corps after serving over six years of honorable service. On 17 April 1984, you received nonjudicial punishment (NJP) for two periods of unauthorized absence (UA) and being incapacitated for the proper performance of duties. On 31 January 1986, you received NJP for dereliction of duty. On 26 February 1986, you tested positive for cocaine as result of a command-directed urinalysis. Additionally, while you were assigned to a urinary surveillance program, you tested positive for cocaine, and were medically evaluated for drug dependency but the extent of your drug usage was unable to be determined due to your attitude and uncooperativeness. On 4 April 1986, you were convicted by summary court-martial (SCM) of wrongful use of cocaine. You were sentenced to a forfeiture of pay and a reduction in paygrade from E-6 to E-5. On 11 April 1986, you were, notified of administrative discharge action for misconduct due to drug abuse. At that time, you elected to have your case heard before an administrative discharge board (ADB). On 16 April 1986, your

security clearance was revoked. On 8 May 1986, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge due to drug abuse. However, after you consulted with counsel, you elected to waive your right to have your case considered by an ADB, and elected to submit a personal statement in rebuttal. In your statement, you asserted that the command-directed urinalysis to which you submitted was based on speculation and conjecture, not probable cause, that you never consumed drugs, and that your SCM conviction was based upon the admission of the results of an unlawful urinalysis, and the administrative processing at the time was premature. The Staff Judge Advocate (SJA) found your case to be sufficient in law and fact. It was recommended that your involvement with illegal drugs rendered you unfit for further service in the Marine Corps. Further, the SJA noted that your allegation concerning the urinalysis was resolved adversely at your SCM, and concurred with the recommendation that you be separated from the Marine Corps with an OTH discharge by reason of misconduct due to drug abuse. On 6 June 1986, the separation authority directed that you be discharged from the Marine Corps with an OTH characterization of service. You received your OTH discharge on 13 June 1986.

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 statement that your ability to thrive in the Marine Corps was proven by the fact that rose to the rank of Sergeant (E-5) in three years, and numerous awards received in the course of your service. Your assertions that your chain of command should have placed more of a serious effort on rehabilitating and treating the root cause of your issues, which at the time consisted of severe marital and family stress, and made a material error of discretion by giving you an unduly harsh characterization of service. Further, that the error has prejudiced you by continually harming you since 1986. Additionally, you assert that your chain of command did not properly take into consideration your faithful service, but instead focused solely on the incident that resulted in your discharge, and your accomplishments and actions since your discharge has demonstrated your outstanding character, and the value you bring to your community. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJP's, SCM conviction for wrongful cocaine use, and being a serious petty officer at the time, outweighed these mitigating factors. 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,

11/29/2021



Executive Director

