



**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: 4408-21  
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.

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.

Although you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 10 December 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 to the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and 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 also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active duty on 2 December 1998 after signing a statement of understanding regarding the Marine Corps' policy on illegal drug use and receiving a drug abuse waiver in which you endorsed minimal prior use of marijuana. During a

period of leave following your completion of boot camp, you used cocaine, for which you tested positive on 15 March 1999 and received nonjudicial punishment (NJP) for Article 112a for the wrongful use of cocaine on 29 March 1999. During substance abuse screening on 31 March 1999, you identified your cocaine use as an “isolated incident” and were therefore not recommended for treatment at that time. Your command notified you of processing for administrative separation for misconduct due to drug abuse with a recommended characterization of service as other than honorable. In your acknowledgement of rights, you elected to waive your right to counsel and to an administrative board; however, you submitted a statement in which you admitted to the facts of your cocaine use and stated that you had tried to clean your system of drug metabolites before returning from leave and did not think you would get caught. Although you stated that you felt ashamed for being a disgrace to the Marine Corps, your student command endorsement noted that you admitted to being a routine drug abuser prior to entering the service, to include weekly marijuana use as well as prior cocaine use and that you had not revealed the scope of your prior drug abuse at the time of your enlistment. On 24 May 1999, your separation was approved following a legal sufficiency review, and you were discharged on 2 June 1999.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you suffered from the undiagnosed conditions of cannabis dependence, cocaine dependence, and alcohol dependence. The Board also considered your contention that you were not given an opportunity for treatment or services even after being evaluated for these conditions, but that you have since sought treatment for your addictions and for depression. In reviewing your contention of suffering mental health conditions, to include your request that the Veteran’s Administration release the progress notes for your substance abuse treatment, the Board applied liberal consideration to evidence which might support the existence of those conditions occurring in-service and also considered the AO in making its determination.

The AO noted your statement that you had joined the Marine Corps to get away from your drug using and reckless past and that you had failed to reveal the severity of your pre-service substance abuse to your recruiter. The AO observed that you denied any history of mental health conditions prior to enlisting and enlisted with a drug use waiver based on a claim of minimal prior use of marijuana. The AO outlined that, following your positive urinalysis for cocaine, you received an evaluation for substance abuse during which a clinical psychologist assessed you as not needing treatment based on your indication that your cocaine use was an isolated incident. From your service records, the AO identified no evidence of symptoms or behavioral changes supporting a mental health condition, nor did your separation physical indicate any mental health complaints. The AO further observed that you did not provide any post-discharge clinical records in support of your contention regarding any specific mental health diagnosis. In its deliberations, the Board concurred with the AO’s assessment that your records contained insufficient evidence to establish that you suffered from a mental health condition as a result of your military service or that your in-service misconduct could be attributed to such condition. Based upon this review, the Board concluded that the potentially mitigating factors you contend were insufficient to warrant relief. Specifically, the Board found that your misconduct, as evidenced by your conviction by NJP, outweighed the mitigating evidence you presented. 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 the 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,

1/9/2022

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Executive Director

Signed by: █