



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

█  
Docket No: 4745-21  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 you did not file your application in a timely manner, the Board waived the statute of limitations 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 7 January 2022. 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 Reserve on 31 October 1995 and, after being approved for a moral waiver, began a period of active service on 7 August 1996. You were subject to a company-level nonjudicial punishment (NJP) on 26 September 1997 for two specifications of violating Article 92 of the Uniform Code of Military Justice (UCMJ), failure to obey a lawful order, when you failed to sign out of the liberty log book or take your liberty card with you and then returned after the expiration of liberty. Shortly after you completed training at the Jungle Warfare Training School in Panama, an 18 May 1998 drug lab message notified your command of your positive urinalysis results for cocaine metabolites. You received a second NJP on 22

May 1998 for violating Article 112a of the UCMJ for wrongful use of cocaine. Your command notified you of processing for administrative separation for misconduct due to drug abuse and, on 5 June 1998, you elected to waive your rights to consult with counsel, to a hearing before an administrative board, and to submit a statement in rebuttal. On 11 June 1998, a report of substance abuse screening diagnosed you as alcohol dependent but identified your drug abuse as an isolated incident. Legal review determined your separation processing to be sufficient in law and fact, and the separation authority approved your separation for misconduct with an other than honorable characterization of service on 16 July 1998. You were discharged on 16 July 1998 with average proficiency and conduct marks of 4.1/4.1 on a 5.0 scale, having completed 1 year, 11 months, and 10 days of active service under a contract for 4 years of active duty

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, to include but not limited to: your sincere regret at not fulfilling your oath because you loved being a part of something bigger than yourself and took great pride in being a Marine, your desire to upgrade your discharge so that you can tell your son that you are a veteran without being ashamed of your discharge, your contention that your characterization of service makes you feel as if you never served, and your contention that your discharge was inequitable based on a mistake made during your youth when you were impressionable and subject to peer pressure from older, more experienced Marines. The Board also acknowledged your post-service efforts at sobriety, which you have achieved and maintained for the past 5 years after multiple attempts at rehabilitation.

Because you contend a mental health condition, the Board considered the AO, which noted that there are no in-service or post-service clinical records indicative of a mental health condition that would mitigate your misconduct. The Board concurred with the opinion of the AO that the evidence failed to establish that you suffered from a mental health condition at the time of your military service or that such a condition mitigated your in-service drug abuse. Based upon this review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct evidenced by your NJPs, one of which was for wrongful cocaine use, outweighed the factors you submitted for consideration at this time. Accordingly, 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 is attached 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, \_\_\_\_\_

2/15/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]