



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: 6725-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552, 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 5 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, 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).

You enlisted in the Marine Corps and began a period of active duty on 2 May 2016. On 17 March 2017, you received a company-level nonjudicial punishment (NJP) for Article 92, failure to report as ordered and were issued a counseling warning for separation and retention. Your command conducted a command-wide urinalysis on 8 January 2018. Your results were reported on 22 January 2018 and reflected a positive sample for cocaine metabolites of 107 ng/ml, which exceeded the regulatory confirmation cutoff of 100 ng/ml required in reporting positive result for cocaine. Upon receipt of this report, your command counseled you that you were eligible, but not recommended, for promotion and your battalion commander chose at that time to take action as the authority for your previous NJP offenses from 17 March 2017.

Rather than expose you to charges before a special court-martial, your commanding officer recommended a fast-track disposition on 25 January 2018 to permit disposition of your drug abuse misconduct at a summary court-martial (SCM) in return for your agreement to waive your right to a hearing before an administrative separation board. You were convicted of Article 112a, wrongful use of cocaine, before an SCM held on 12 February 2018. In your 22 February 2018 notification of administrative separation processing, you waived your rights to a board, to counsel, and to submit a statement. Your commanding officer's 14 March 2018 recommendation for your administrative separation is notable in that it recommended a 6-month suspension of your discharge; however, the separation authority did not approve a suspension, and you were discharged on 16 April 2018 with an other than honorable characterization of service due to drug abuse misconduct.

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 contentions that your urinalysis test result did not comply with applicable regulations and should have been reported as negative or invalid, that this irregularity resulted in an interrogation during which you made an involuntary confession without rights advisements, and that your characterization of service is unjust because it was disproportionate for a one-time offense and does not reflect who you are today. The Board noted that you submitted evidence in support of a request for clemency based on a brief period of post-service conduct, which includes meaningful employment with increasing positions of responsibility in which you ensure the safe transportation of millions of children, that you volunteer with veteran service organizations, and that you assist people preparing to enter military service in achieving fitness and nutrition standards. The Board also observed that your character letters from Congressman ██████████ and your father consistently attest to your positive influence and exemplary character in the ██████████ community as well as your desire to join the ██████████ Police Department and continue serving.

Based on its review of your records, the Board found that a presumption of regularity applies to your contentions of error and irregularity. Namely, the Board determined that there was no error or injustice in the procedures of your urinalysis testing and reporting, the interrogation during which you confessed to wrongful use of cocaine, or in the processing of your administrative separation. With respect to the matters you submitted in clemency, although the Board acknowledges that you have begun working toward that end, it concluded that the potentially mitigating factors you submitted were insufficient to warrant relief at this time. Specifically, the Board determined that the severity and recency of your drug abuse misconduct outweighed these mitigating factors. The Board noted you did not submit any documentation or advocacy letters to be considered. 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,

1/25/2022

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Executive Director

Signed by: █