



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: 7196-21
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 initial 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 reconsideration application on 7 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 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 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 enlisted in the Marine Corps on 30 December 1996. Your enlistment physical on 6 December 1996 and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. As part of your pre-enlistment paperwork you disclosed pre-service marijuana use.

On 19 March 1998 your command issued you a “Page 11” counseling warning (Page 11) documenting your failure to conform to prescribed weight standards for your height. The Page 11 expressly warned you that failure to take corrective action may result in administrative separation or limitation of further service. You did not submit a Page 11 rebuttal statement.

Following a Navy Drug Lab message indicating a positive urinalysis for you, on 11 January 2000 you underwent a substance abuse/dependency evaluation. A Navy Medical Officer/Clinical Psychologist (NMO) determined that no substance abuse or dependence was indicated at such time, but the NMO recommended your administrative separation in accordance with the Marine Corps directives prohibiting drug abuse.

On 13 January 2000 you received non-judicial punishment (NJP) for the wrongful use of cocaine. You did not appeal your NJP. Prior to accepting NJP, you acknowledged in writing that you were given the opportunity to consult with a lawyer at no cost to you, and that you expressly chose not to exercise such right.

On 24 February 2000 you were notified of administrative separation proceedings by reason of misconduct due to drug abuse. You elected in writing to waive your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board. On 4 April 2000 the Staff Judge Advocate for the separation authority determined that your separation was legally and factually sufficient. Ultimately, on 14 April 2000 you were discharged from the Marine Corps for misconduct due to drug abuse with an OTH characterization of service and assigned an RE-4B reentry code.

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: (a) you were performing your duties properly since entering the Marines and had a single incident where you ingested marijuana; (b) you were not afforded counsel to explain to you the ramifications of agreeing to NJP; (c) your drug offense should not be enough to prevent you from obtaining an honorable discharge in light of all of the positive things you have done throughout your career; (d) your discharge and reentry code were inequitable; (e) you were not given a proper opportunity to mitigate or correct your mistakes and instead were administratively separated; and (f) post-service you have developed yourself as a model citizen with no criminal record, no drug involvement or alcohol abuse, and no “run-ins” with the law. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

First and foremost, the Board unequivocally disagreed with any argument or suggestion that you were not afforded counsel prior to your NJP hearing. The Board found any such contentions totally baseless and entirely without merit. As stated earlier, your service record indicates you expressly chose not to exercise such right to consult with a lawyer and acknowledged your waiver in writing. Secondly, the controlled substance that was the subject of your NJP was cocaine and not marijuana as your counsel suggests.



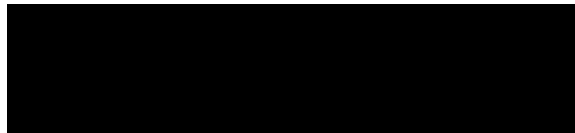
The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

12/23/2021



Executive Director

Signed by:

