



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: 452-22
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 11 March 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 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 commenced active duty on 21 September 1999. Your pre-enlistment physical on 13 August 1999 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. You stated you used marijuana ten times with your last usage occurring in May 1999. You denied all other drug abuse and alcohol abuse. As part of your enlistment application you signed the "Statement of Understanding Marine Corps Policy Concerning Illegal Use of Drugs," where you expressly acknowledged that illegal distribution, possession, or use of drugs was not tolerated in the Marine Corps.

On 27 September 2000, your command issued you a "Page 11" counseling warning (Page 11) for

having a female guest in your barracks room and failing to log such guest in the visitor's log book. The Page 11 expressly warned you that failure to take corrective action may result in administrative separation or limitation on further service. You did not submit a Page 11 rebuttal statement.

On 26 July 2002, your command issued you a Page 11 documenting your poor judgment and lack of tact. The Page 11 expressly warned you that failure to take corrective action may result in judicial or adverse administrative action, including but not limited to administrative separation. You did not submit a Page 11 rebuttal statement.

On 11 October 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA), three specifications of failing to obey a lawful order, and two specifications of insubordinate conduct. You did not appeal your NJP.

On 25 October 2002, your command issued you a Page 11 documenting your failure to display sound judgment and conduct unbecoming, specifically your inability to follow orders, and lack of tact and respect when dealing with senior Marines. The Page 11 expressly warned you that further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or processing for administrative separation. You did not submit a Page 11 rebuttal statement.

Following a Navy Drug Lab message indicating a positive urinalysis for you, on 7 February 2003, the suspended portion of the punishment from your October 2002 NJP was vacated and ordered executed due to continuing misconduct. On 7 February 2003, you received NJP for both the wrongful use and wrongful possession of marijuana. 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. You did not appeal your NJP.

On 12 February 2003, you underwent a substance abuse/dependency evaluation. The Substance Abuse Counselor determined that no substance abuse or dependence was indicated at such time.

On 26 March 2003, you were notified of administrative separation proceedings by reason of misconduct due to drug abuse and misconduct due to a pattern of misconduct. You consulted with military counsel and, on 1 April 2003, you elected your right to request an administrative separation board (Adsep Board).

On 30 May 2003, an Adsep Board convened in your case. At the Adsep Board you were represented by a Marine Corps Judge Advocate. Following the presentation of evidence and witness testimony, the Adsep Board members consisting of an O-4, a CWO-4, and an E-7 unanimously determined that you committed the misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the Marine Corps with an other than honorable conditions (OTH) characterization of service. On 12 June 2003, your military counsel submitted a clemency package requesting your

OTH separation be suspended. However, your commanding officer recommended to the Separation Authority your suspension request be denied and that you be separated with an OTH discharge. Ultimately, on 29 July 2003, you were separated from the Marine Corps for drug abuse with an OTH discharge characterization and assigned an RE-4 reentry code.

On 1 November 2007, the Naval Discharge Review Board (NDRB) denied your initial application for relief. The NDRB determined your discharge was proper as issued and no change was warranted.

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: (a) you tested positive for marijuana but you joined the service with a habit, and (b) it has been eighteen years since your discharge and you have suffered enough. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

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 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 Department of Veterans Affairs 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 pattern of serious 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



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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,

3/21/2022



Executive Director

Signed by:

