



**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: 0520-22  
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 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 4 February 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 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 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 and began a period of active service on 6 May 2013. You graduated in the top five percent of your School of Infantry class in September of 2013 and you received letters of appreciation while in the grades of Lance Corporal and Corporal for your contributions to the Single Marine Program and your participation in a retirement ceremony. However, you were counseled on 13 January 2016 due to a non-recommendation for promotion to Sergeant/E-5 because based on your failure to complete the Corporal's Course. You received additional counseling on 15 March 2016 for dereliction of duty while assigned as the Barracks duty noncommissioned officer after you were found asleep in your barracks room without

properly supervising your assistant duty noncommissioned officer. You received successive counseling entries in April, May, and June of 2016 indicating that you were not recommended for promotion because you were a subject of an investigation by the Naval Criminal Investigative Service (NCIS) and were pending legal action for unspecified misconduct. You received an additional counseling that you were not recommended for promotion on 15 September 2016 due to pending legal action, the charges for which were tried before Special Court-Martial (SPCM) on 11 January 2017. You were found guilty for violations of three specifications of Article 92 and one specification of Article 112a as a result of the possession or use of drug abuse paraphernalia on or about 15 September 2016. Your adjudged punishment included 9 months of confinement, reduction to Private/E-1, and a Bad Conduct Discharge (BCD); however, the Convening Authority approved only the BCD, reduction, and 30 days of confinement. You were discharged on 15 September 2017 following completion of appellate review of your conviction and adjudged sentence.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service, your contention of mistake of law, in that a fellow Marine introduced you to a substance which, at the time, you did not know was an illegal drug, your assertion that you were forthcoming when interviewed by NCIS, your youth at the time of the offense, and your contriteness that you have learned from your mistakes and will not repeat them in the future. The Board also acknowledged that you are proud of your service as a Marine and that you desire a second chance at enlisting and continuing to serve. In this regard, the Board carefully weighed your contention of mistake of law; however, noting that your service record contains only the Record of Conviction by Court-Martial with no other amplifying trial or investigative records, the Board found that the available evidence, to include the minimal description you provided in support of your application, failed to adequately identify the nature of the illegal substance in a way that the Board could favorably assess that contention. The Board is not an investigative agency and, absent evidence to the contrary, relies on the presumption of regularity in making its findings.

With respect to the additional clemency matters you submitted, the Board determined that these were insufficient to outweigh the misconduct evidenced by your conviction at SPCM and your sentence of a BCD. Based upon the totality of its review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct outweighed these mitigating factors. Despite your multiple arguments for mitigation, the Board concluded that the seriousness of your drug offenses outweighed those arguments. Therefore, the Board determined that the preponderance of the evidence supports retaining your BCD. 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 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,

2/22/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]