



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: 1057-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 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 March 1995. Your pre-enlistment physical examination on 25 February 1995 and self-reported medical history noted no neurologic or psychiatric conditions or symptoms. 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 6 March 1996, you received non-judicial punishment (NJP) for resisting arrest, assault, and drunk and disorderly conduct. You did not appeal your NJP.

On 16 July 1997, your command issued you a "Page 11" counseling warning (Page 11) for unauthorized absence (UA) when you failed to report for duty as the Regimental Assistant Duty NCO on 12 July 1997. The Page 11 expressly warned you that a 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 17 July 1997, pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) of UA and two specifications of the wrongful use of marijuana. You were sentenced to confinement for sixty days, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay for two months, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 28 October 1997, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of appellate review in your case, on 7 May 1998, you were discharged from the Marine Corps with a BCD and assigned an RE-4 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: (a) when you were younger you made a mistake and tested positive for marijuana on active duty, (b) in spite of the BCD you have managed to turn your life around and run your own landscaping company, (c) you are very regretful of the decisions you made on active duty causing embarrassment to yourself, your family, and fellow Marines, and (d) you humbly ask for your BCD to be overturned so you can be proud to say you are a Marine. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board unequivocally did not believe that your record was otherwise so meritorious to deserve an 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 also determined that your misconduct constituted a significant departure from the conduct expected of a Marine and that the record clearly reflected your misconduct was intentional, willful, and demonstrated 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was 3.7 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct.

The Board 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. Lastly, 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and



disregard for good order and discipline clearly merited your BCD. In the end, the Board concluded that you received the correct discharge characterization based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your post-service conduct and 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.

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,

3/21/2022



Executive Director

Signed by:

