



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: 2488-22
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 3 June 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 15 May 1993. Prior to your entry into active duty, on 30 March 1993, you were counseled on the Marine Corps drug and alcohol abuse policy. In January and February 1995, you went on two period of unauthorized absence, totaling 3 days, 5 hours, and 40 minutes. On 26 April 1995, you were convicted at a special court martial (SPCM) for conspiracy to distribute crack cocaine, disrespect in language, and distribution of cocaine. You were sentenced to confinement, forfeiture in pay, and a Bad Conduct Discharge (BCD). On 3 January 1996, your appointed counsel elected to provide no comments or rebuttal to the staff judge advocates (SJA) recommendation for your separation from the Marine Corps. On 27 January 1997, the final appellate review affirmed and

directed the execution of your BCD. You were subsequently discharged, on 9 June 1997, as a result of your court martial conviction.

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 desire to upgrade your characterization of service and contentions that you are not a drug dealer and you were not given the opportunity to explain what took place prior to your BCD. Further, the Board considered your additional statements regarding the events that led to your BCD. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug distribution offense. Further, the Board noted you were sufficiently counseled regarding the Marine Corps policy on drug and alcohol, you elected counsel, and you pled guilty to the charges of your SPCM. Further, the Board noted your case was reviewed under the appropriate administrative processes prior to the execution of your BCD. Based on these factors, the Board was not persuaded by your assertion that you were not a drug dealer. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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 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,

6/16/2022

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Executive Director

Signed by █

Enclosure: DD Form 214