



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: 2727-22
Ref: Signature Date



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 29 April 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 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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).

You enlisted in the Marine Corps and began a period of active service on 4 February 1999. On 28 March 2001, you pled guilty before a Special Court-Martial (SPCM) pursuant to a pre-trial agreement to a single violation of Article 86, for unauthorized absence from 13 January 2001 – 16 January 2001, and two specifications of violation of Article 112a, for wrongful use of marijuana and wrongful use of cocaine. Your adjudged sentence included a Bad Conduct Discharge (BCD). Your request to the Naval Clemency and Parole Board, seeking the suspension of your discharge and reinstatement to active duty on probation, was denied on 20 June 2002. In that request, you contended that you were a good Marine who had made a bad mistake. The findings and sentence in your trial were affirmed, on 27 September 2002, following appellate review, and you were discharged on 28 May 2003.

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. The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and your evidence that the Department of Veterans Affairs (VA) has administratively determined, for its purposes, that you were discharged under honorable conditions. You specifically requested that your discharge read "OTH UHC," which appears to mean "other than honorable under honorable conditions." For clarity, and notwithstanding punitive discharges adjudged at court-martial, the Board observes that the authorized characterizations incident to administrative discharge are: under Other Than Honorable conditions, General (Under Honorable Conditions), or Honorable. The Board further notes that the VA, as an independent executive agency, exercises its own internal standard of review in rendering administrative decisions regarding character of discharge determinations, which are distinctly for VA purposes. As such, VA determinations of character of discharge are not made under the same standard of review applied by the Board and, therefore, are not binding upon the Board. With respect to the supporting documents you submitted identifying the VA character determination, the Board noted that you did not provide the background documents or statements which you may have submitted to the VA in support of its decision nor did you provide the detailed VA decision letter which outlines the rationale relied upon in arriving at its decision. Further, the Board noted you did not submit any advocacy letters for clemency purposes.

After a thorough review of your record and contentions, to include the VA determination of your character of discharge, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to outweigh the misconduct evidenced by your SPCM conviction and adjudged punitive discharge. In making this finding, the Board considered the seriousness of your misconduct that included drug use. 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, the Board determined that your request does not warrant 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,

5/16/2022

