



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: 4082-22
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 10 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 9 September 1997. Prior to your entrance onto active duty, on 13 August 1997, you were counseled regarding the Marine Corps drug use policy. You were counseled, on 25 November 1998, following your failure of an inspection. On 28 June 1999, you were convicted at a summary court martial (SCM) regarding your wrongful use of marijuana. You were notified, on 7 December 1999, that if you maintained good conduct for 12 months, administrative separation proceedings would be suspended at the end of your enlistment. On 3 January 2001, you were counseled regarding your positive urinalysis for THC. Subsequently, on 26 January 2001, you were convicted at your second SCM for wrongful use of a controlled substance. On 23 May 2001, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to drug

abuse, at which point, you waived your right to consult with counsel, and review of your case by an administrative discharge board (ADB). On 22 August 2001, the separation authority approved and directed your discharge from naval service with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 31 August 2001, you were so discharged.

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 character of service and contentions that you are no longer the same Marine, have a career and are about improving yourself, and want to follow down the right and responsible path. 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 SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two separate drug offenses. Additionally, the Board noted you were counseled on multiple occasions regarding your continued drug related misconduct and provided a reasonable opportunity to correct your conduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commends your post-discharge desires to be a better person, 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,

7/11/2022

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