



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: 4160-22
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 1 July 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).

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 commended active duty on 25 May 1999. As part of your enlistment application, on 5 August 1998, 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 9 May 2000, you received non-judicial punishment (NJP) for insubordinate conduct toward a staff NCO and for violating a lawful order (underage drinking). You did not appeal your NJP. On 16 March 2001, you received NJP violating a lawful order (providing alcohol to a minor).

You did not appeal your NJP. On 26 April 2001, you received NJP for the wrongful use of multiple controlled substances (LSD, MDA/MDMA aka "Ecstasy," and Methamphetamine). You did not appeal your NJP.

On 29 June 2001, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of two (2) separate specifications of the wrongful use of cocaine and marijuana, respectively. You were sentenced to confinement for 90 days, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). Pursuant to a pretrial agreement, your confinement in excess of sixty days was suspended. On 12 July 2001, the Convening Authority approved the SPCM sentence.

However, while your SPCM conviction was undergoing appellate review, pursuant to your guilty pleas, on 5 March 2002, you were convicted at a General Court-Martial (GCM) of two separate specifications of either the wrongful use or distribution of a controlled substance, dishonorably failing to pay a just debt, possessing drug paraphernalia, solicitation to commit an offense, making a false official statement, communicating a threat, and counterfeiting. You were sentenced to confinement for eight years, a reduction in rank to the lowest enlisted paygrade (E-1), total forfeitures of pay, a \$1,000 fine, and a discharge from the Marine Corps with a Dishonorable Discharge. If you did not pay the \$1,000 fine, you were to serve an additional year of confinement. On 8 January 2003, the Convening Authority approved the GCM sentence but suspended all confinement in excess of twenty-four months.

Upon the completion of SPCM appellate review in your case, on 6 May 2004, 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) you won a meritorious Lance Corporal board while serving in Okinawa, (b) you acknowledge your wrongdoings and have paid the price including brig time and the everlasting shame you have to live with, (c) your hiccup was when you were twenty-one and now you are forty-two and have always held steady employment, (d) you possess a great work ethic and pride yourself with upholding a high standard of morals and values, (e) you are a good man and father with a good heart and good intentions, and (f) you have waited twenty years to place this request and a discharge upgrade would truly mean the world to you. 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 NJPs SPCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included multiple drug offenses. 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

