



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: 5172-22
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 15 August 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).

During your enlistment processing you disclosed infractions of a minor in possession of alcohol, two instances of not have a vehicle inspection, and marijuana use. An interview was conducted and you were allowed to proceed with your enlistment processing. You enlisted in the U.S. Marine Corps and commencing a period of active duty on 26 March 1990.

On 20 September 1990, you were counseled regarding an infraction of unauthorized absence (UA), failure to obey regulations and orders, and other infractions of the Uniform Code of Military Justice. Although afforded the opportunity to submit a statement in rebuttal, you chose not to do so. On 4 November 1990, you were again counseled regarding your UA from your appointed place of duty due to alcohol. This counseling also documented you were showing signs of alcohol abuse. Again, you were given the opportunity to provide a statement in rebuttal but chose not to do so. On 30 March 1993, you received your first nonjudicial punishment (NJP) for being disrespectful in language and failing to obey a lawful order. You did not appeal this

NJP. On 20 August 1993, you received a second NJP for wrongfully using methamphetamines and, again, did not appeal this NJP.

On 12 October 1993, you were notified of your impending administrative separation due to pattern of misconduct (POM) and drug abuse, at which time you waived your right to consult with military counsel and to have your case heard before and administrative discharge board. On 12 October 1993, your CO recommended you be expeditiously discharged for drug abuse. On 19 October 1993, the separation authority agreed with your CO and directed you be discharged by reason of misconduct for drug abuse with an Other Than Honorable (OTH) characterization. On 19 November 1993 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 discharge and contentions that: (1) "I believe my urine test came back positive for meth, but may have ephedra which was in many of the supplements we were taking," (2) "The best day of my life came when I graduated Parris Island," (3) "During my time in the Corps I fought with Fox █ in Desert Storm," (4) you "recently learned that some of the over the counter supplements contained ephedra which can show up on the urine test," (5) you "were discharged with three months left on your EAS (End of Active Service)," (6) and "one day I want to go to my reunion at the USMC Museum as an honorably discharged Marine and I would also like to be buried as a Marine." 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 two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board was not persuaded by your arguments of innocent ingestion since you provided no evidence to substantiate your contention that supplements causes your positive urinalysis. 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. 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 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 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, _____

9/7/2022

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Executive Director

Signed by: █