



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No: 5439-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 you did not file your application 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 23 September 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps under a reserve option contract and served an initial period of active duty from 7 July 1999 through 16 December 1999, at which time you were honorably discharged into the ready reserve. In May of 2000, you were administratively counseled that future involvement with civilian authorities indicates disregard for good order and discipline and that continued association with civilian acquaintances who display certain conduct risked bringing discredit upon yourself and the Marine Corps. You were not recommended for promotion in February of 2002 due to unauthorized absences (UAs) and were also counseled twice for failure to pass your physical fitness test in January of 2001 and December of 2004. Although your reserve obligation would otherwise have completed in the summer of 2005, you were recalled to active duty in January 2005 for a period of 1 year to deploy in support of

overseas contingency operations. However, following a period of liberty, you were subject to a routine urinalysis which, on 1 March 2005, reported positive results for methamphetamine, amphetamine, and marijuana. Pursuant to a pre-trial agreement and in return for a withdrawal of Special Court-Marital (SPCM) charges, you accepted nonjudicial punishment (NJP) and plead guilty to four specifications of violating Article 112a. As part of the agreement, you also waived your right to a hearing before an administrative board and did not submit a rebuttal to your administrative separation proceedings. Your separation under Other Than Honorable (OTH) conditions for misconduct due to drug abuse was approved by the Commander, ██████████ Marine Logistics Group, and you were subsequently 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 your contentions that you were otherwise a “model” member of the Marine Corps prior to your positive urinalysis, that your violation of drug use regulations over 15 years ago should not prevent you from obtaining an honorable discharge now, that your narrative reason for separation does not account for your character of service prior to your discharge, that you admit having made a poor decision to use illegal substances after being recalled to active duty, and that your post-discharge character and accomplishments merit consideration for an upgrade based on clemency. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 NJP and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. The Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that recreational drug use in any form is still against Department of Defense regulations and not permitted while serving in the military. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Further, although the Board noted your evidence of civil service, your academic efforts and service hours toward obtaining a Master’s Degree in social work, and your contention that your drug abuse was a single instance of poor judgment, in addition to eight letters outlining your post-discharge growth and good character, the Board found the circumstances and timing of your final drug use offense significant in that your misconduct interfered with a combat deployment which you had been recalled to support. The Board also expressed concerns regarding the candor of your contentions, observing that you described yourself as an otherwise model Marine in spite of the fact that you were counseled on more than one occasion regarding your behavior and conduct, to include unauthorized absences, and also failed your mandatory physical fitness test twice. Ultimately, the Board concluded that the potentially mitigating factors you submitted for consideration are insufficient to outweigh the misconduct evidenced by your NJP for poly-drug abuse and your administrative counseling for UAs and involvement with civil authorities. Finally, the Board determined that you already received a large measure of clemency when the Marine Corps agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. 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 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,

10/4/2022

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Executive Director

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