



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: 5928-22

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 9 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).

You enlisted in the Marine Corps and entered active duty on 20 June 1995. Your pre-enlistment physical examination, on 23 June 1994, and self-reported medical history both noted no neurologic or psychiatric issues.

On 13 February 1997, pursuant to your guilty pleas, you were convicted at a General Court-Martial (GCM) of: (a) conspiring with another Marine to wrongfully possess methamphetamine and marijuana with the intent to distribute the controlled substances, (b) the wrongful distribution of both methamphetamine and marijuana, and (c) the wrongful use of methamphetamine. You were sentenced to confinement for forty months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Dishonorable

Discharge (DD). On 24 April 1997, the Convening Authority (CA) approved the GCM sentence as partially reduced by the CA. Upon the completion of GCM appellate review in your case, on 4 March 1999, you were discharged from the Marine Corps with a DD and assigned an RE-4B 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, your desire for a discharge upgrade and change to your narrative reason for separation. Additionally, the Board considered your contentions that: (a) you apologize to the Marine Corps for your actions leading to your GCM and DD, (b) you understand that your actions fell far below the USMC's high standards of personal conduct, (c) you remain haunted by your foolish misconduct from your youth and have had to endure the shame of your GCM conviction for over two decades now as you seek to restore your honor and good name, (d) you have been improperly stigmatized and harmed by your DD, (e) the effects of your DD linger even in your attempts to continuously better yourself, (f) you are treated as a second class citizen in this country, (g) you have had to live with the shame and embarrassment that accompanies anything other than an honorable discharge, (h) you were released from confinement substantially early based on good behavior, and (i) you should no longer be required to bear the burden of your DD that so significantly affects your life every day after years of non-stop fighting to be a success. 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 GCM conviction, outweighed these mitigating factors. 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 record. The Board also determined that your drug-related misconduct constituted a significant departure from the conduct expected of a Marine, and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Absent a material error or injustice, the Board declined to summarily upgrade a punitive discharge solely for the purpose of facilitating veterans benefits, or enhancing educational or employment opportunities. The Board 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. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious drug-related misconduct. The Board determined that illegal drug use and distribution by a

Marine is contrary to USMC core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board also noted that marijuana possession and/or use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. As a result, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your DD and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. Finally, the Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments. While the Board commends your post-discharge accomplishments and good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading your characterization of service, changing your narrative reason for separation, or granting clemency in your case. 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,

9/15/2022

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Executive Director

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