



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

██████████
Docket No: 5983-22
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 waived the statute of limitation in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 4 November 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 to the Kurta Memo and 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 also considered the advisory opinion (AO) of a qualified mental health provider, which was considered favorable to your contentions of mental health.

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 and began a period of active duty on 7 July 2008. On 29 May 2009, you received nonjudicial punishment (NJP) for a violation of Article 86 following an unauthorized absence (UA) from your appointed place of duty for a period of 7 days, and you were issued administrative counseling warnings regarding the potential that further misconduct could result in administrative discharge. You were subsequently counseled, in June 2009, for marijuana use following a positive urinalysis and then for amphetamine/methamphetamine use.

On 10 July 2009, you received a second NJP for violations of Article 86 for failure to arrive your appointed place of duty at the prescribed time and Article 92 for failure to obey a lawful order by breaking restriction during your UA.

While receiving residential treatment for substance abuse in September 2009, you attempted to commit suicide. Your treatment included diagnoses of Alcohol Dependence, Sedative Hypnotic Dependence, Nicotine Dependence, Amphetamine Dependence, Substance Induced Mood Disorder, and Adjustment Disorder.

Your charges for violation of Article 112a due to wrongful use of methamphetamine were referred to a Summary Court-Martial (SCM) pursuant to a pre-trial agreement (PTA) which you signed on 14 September 2009. Following your guilty plea to this Article 112a charge at your SCM, a separate charge sheet was drafted, on 29 September 2009, for a violation of Article 112a due to wrongful use of marijuana with a recommendation to dispose of that charge before Special Court-Martial (SPCM). However, you were notified of administrative separation processing for misconduct due to drug abuse and, on 8 October 2009, waived your right to a hearing before an administrative board consistent with the terms of your PTA. The recommendation for your separation under Other Than Honorable (OTH) conditions was forwarded for approval by Commander, ██████████ Marine Division. You were subsequently discharged on 22 December 2009 with an OTH and assigned a RE-4B reentry code.

Your request for a change of your reenlistment code was considered by the Naval Discharge Review Board (NDRB) on 13 September 2011, to include your contentions of favorable post-service conduct. The NDRB denied your request after concluded your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta and Wilkie Memos. These included, but were not limited, your desire to change your reentry code to permit further service and your contentions that you suffered from drug addiction prior to entering military service, with an overwhelming desire to self-destruct, but that you have overcome your addiction and have remained entirely drug and alcohol free with no desire to return to substance use or abuse so that you can repay the injustice you caused to your country, family, and God. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

Because you contend that a mental health (MH) condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and received several substance use disorder diagnoses, as well as mood and adjustment disorder diagnoses that can not be separated from his significant substance use. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. There is no evidence of another mental health condition other than the diagnoses identified in service, and his misconduct is consistent with a substance use disorder. Substance use is incompatible with military readiness and discipline, and considered amenable to treatment,

depending on the willingness of the individual. The Petitioner’s in-service and post-service statements indicate that his substance use began prior to military service and continued during military service, and the evidence indicates that he was aware of his misconduct and responsible for his behavior.

The AO concluded, “it is my considered clinical opinion there is evidence of mental health conditions (substance use and adjustment disorders) experienced during military service. There is evidence his misconduct could be attributed to the mental health conditions experienced during military service.”

After thorough 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 and SCM, 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. Further, while the Board noted that the AO found evidence that your disorders contributed to your continued in-service drugs use, they observed that you did not report any pre-service drug use at the time of your initial entry. As a result, although your substance use disorder may have contributed to your continued drug use during your military service, the Board did not find this relationship to be mitigating with respect to your drug abuse misconduct. While the Board appreciates the positive direction you are seeking with your current education and training, the Board concluded that the potentially favorable factors you submitted for consideration are insufficient to outweigh your misconduct evidenced by polysubstance abuse during your military service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a RE-4B reentry code. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants changing your reentry code or granting relief as a matter of clemency or equity. 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,

11/20/2022

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Executive Director
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