



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: 5991-22
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 14 October 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 U.S. Marine Corps and began a period of active duty on 8 February 1993. On 21 July 1994, you submitted a Humanitarian reassignment transfer (HUMS) request to take care of your mother. It was approved on 16 August 1994 and you began a period of temporary additional duty (TAD) through 3 January 1995. While you were on your HUMS TAD, you began a period of unauthorized absence (UA) for 65 days until you were apprehended. You received NJP, on 13 January 1995, for the UA and then again, on 27 July 1995, for wrongful use of methamphetamine. You were subsequently counseled on two occasions regarding your drug use and, on 1 November 1995, you were found guilty at special court-martial (SPCM) for wrongful use of methamphetamine. As part of your sentence, you were awarded a Bad Conduct Discharge (BCD). Prior to going on appellate leave, you were offered drug and alcohol treatment but refused the treatment. After completion of the appellate review process, you were discharged on 25 May 1997 with a BCD.

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, you desire for a discharge upgrade and contentions that you made mistakes as a young Marine, he experienced personal relationship issues while TAD, you were introduced to methamphetamines by another Marine, you need the upgrade for benefits to take care of your family, and you have held two jobs totaling 24 years. 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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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, the Board determined that your conduct showed a complete disregard for military authority and regulations. Finally, the Board noted that your command already provided you a measure of clemency when they retained you after your first drug offense. Despite their efforts to counsel you regarding your conduct, you continued to commit an additional drug offense. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 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 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,

10/24/2022

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Executive Director

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