



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: 6339-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 December 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 this 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 United States Marine Corps and commenced a period of active duty on 20 April 1970. On 15 May 1972, you were granted a Drug Use Exemption under ALMAR 77 and ALMAR 90, in which you disclosed use of LSD, Mescaline, Cocaine, and Marijuana from February 1971 to May 1972. On 16 May 1972, the exemption was revoked due to your immediate and intentional drug use. On 14 June 1972, you were notified that your Commanding Officer recommended your discharge and you were afforded the opportunity to consult with counsel but waived this right. On 1 August 1972, you were discharged from the Marine Corps by reason of "Unfitness due to Use of Dangerous Drugs," with a General (GEN) characterization of service and a RE-4 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: (1) your assertion that your DD 214 incorrectly lists the reason for separation as “drug related,” (2) your contention that there is no evidence to support this separation basis, and (3) your assessment that the discharge officer was bias due to a prior, unrelated incident. For purposes of clemency and equity consideration, the Board noted that you provided an assessment of your post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your repeated and extensive drug use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. The Board reviewed your record and found extensive evidence to support the basis for separation being listed as “drug related.” Specifically, on 15 May 1972, you acknowledged the scope of the Drug Use Exemption Program and acknowledged that it did not protect you in the event of subsequent drug use. However, the very next day you knowingly and intentionally used drugs, resulting in the revocation of your exemption. The Board relied on the statement you provided on 28 June 1972, in which you state:

I Private █ have used drugs for quite a while. I have also signed the drug exemption, but the following day I broke it. The reason was because I can't handle the Marine way of living any longer-I've received a couple of Court Martials that were so unhuman-that no one could tell me why I had received them. I request for my best benefit, and the Marine Corps that I be discharged from service as the Marine Corps see's fit. I personally feel that I could do a more perfect job on the outside, than I would-and could ever do in any branch of service.

You not only admitt to continued drug use for the purpose of discharge, you requested that your command positively endorse your separation from the service. Although you did not request a characterization upgrade, the Board noted that a GEN characterization is appropriate in your case, as significant negative aspects of your conduct outweighs the positive aspects. The Board felt that your command was being generous in giving you a GEN discharge as opposed to an Other than Honorable (OTH) discharge that would often be assigned in drug related cases. While the Board found sufficient evidence to support the “drug related” separation basis, they found no evidence of bias or error on the part of your command. Accordingly, while the Board commends your post-discharge accomplishments, 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, changing your narrative reason for separation, 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 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,

12/28/2022

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Executive Director

Signed by: █