

DEPARTMENT OF THE NAVY

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

> Docket No: 6362-22 Ref: Signature Date



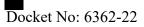
Dear Petitioner:

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 21 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 began a period of active duty on 15 September 1997. You subsequently completed this enlistment with an Honorable characterization of service on 15 December 2000 and immediately reenlisted. On 25 June 2002, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and conduct. Specifically, your lack of maturity and poor judgement. You were recommended corrective actions and advised that failure to take corrective action and any further violations of the Uniform Code of Military Justice (UCMJ) may result in administrative action, including but not limited to non-judicial punishment and administrative separation from the Marine Corps.

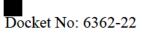
On 22 January 2003, you were convicted by a special court-martial (SPCM) of failure to obey a lawful written order, false official statement, and incapacitated for the proper performance of duties. On 11 March 2003, you were again convicted by a SPCM of failure to obey a lawful general order/regulation on diverse occasions by wrongfully using a controlled substance analogue, natural substance, chemical, prescribed or over the counter drug, or pharmaceutical



compound with intent to induce intoxication, excitement and/or stupefaction of the central nervous system, conspire with several Marines to commit an offense under the UCMJ, and wrongfully using provoking and/or reproachful words. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). On 22 July 2003, you were informed that you were authorized voluntary appellate leave pending the Convening Authority approving your court-martial sentence, and upon CA's approval of your punitive discharge, you would be notified that your voluntary appellate leave status will be changed to involuntary appellate leave status. On 2 August 2004, you were transferred to the Navy and Marine Corps Appellate Leave Activity (NAMALA). You were informed that your leave status was changed to involuntary appellate leave, and you were to remain assigned to the NAMALA pending appellate review of the punitive discharge. The BCD was subsequently approved at all levels of review and, on 22 August 2007, you were so 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 character of service and correct your date of discharge. The Board also considered your contentions that your discharge was unjust, your discharge was the result of you using "Alpha-Methyltryptamin (AMT)," the product was purchased over the counter while you were stationed in Japan, and you believed that it was legal. You state that you informed your chain of command that you were using AMT. You further contend that you was made an example of rather than receiving an "Under Honorable or Under Other Than Honorable Discharge in which other drug use separation are issued." 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 that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your two SPCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, which involved a drug offense, and concluded that it showed a complete disregard of military authority and regulations. The Board determined that illegal drug use by a Marine is contrary to Marine 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 considered the negative impact your conduct likely had on the good order and discipline of your command. Furthermore, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, despite your arguments of unfairness, the Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. The Board noted that your BCD was issued by a court-martial during which you were afforded all the required due process required by law. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting elemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined 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.

