



**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: 8020-22  
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 reconsideration application on 23 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 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 September 2004. Your pre-enlistment physical examination, on 11 August 2004, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 12 December 2005, you received non-judicial punishment (NJP) unauthorized absence (UA) and for failing to obey a lawful order or regulation. You did not appeal your NJP. On 31 March 2006, you received NJP for making/uttering a bad check by dishonorably failing to maintain sufficient funds. You did not appeal your NJP.

On 9 May 2006, a Navy Drug Screening Laboratory (NDSL) message indicated your urine sample tested positive for cocaine at a level of 18,227 ng/ml, well above the Department of Defense testing cut-off level for the cocaine metabolite of 100 ng/ml. On 16 May 2006, you received NJP for the wrongful use of cocaine. You did not appeal your NJP. On the same day, your command issued you a "Page 11" warning (Page 11) documenting your NJP. You did not submit a Page 11 rebuttal statement. On 31 May 2006, you refused substance abuse rehabilitation treatment.

On 26 July 2006, you were notified of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your rights to consult with counsel and to request a hearing before an administrative separation board. Ultimately, on 25 August 2006, you were separated from the Marine Corps for misconduct with an under Other Than Honorable (OTH) conditions discharge characterization 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: (a) you seek an upgrade based on Wilkie Memo considerations, (b) there was a procedural error with your drug test and your OTH was based on a faulty drug test, and (c) you are an active and contributing member of society. For purposes of clemency and equity consideration, the Board noted provided supporting documentation with your application including a brief from your legal counsel.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First, the Board determined that some of the relief you have requested is not within the Board's purview to grant and, consequently, the Board took no action on these requests. The BCNR is not empowered to either: (a) return your uniform items or provide reimbursement for such items, or (b) issue you one "eagle, globe, and anchor" device.

Secondly, the Board unequivocally concluded that there were no material procedural or substantive errors regarding your positive urinalysis test that were prejudicial to you. The Board noted that the urine sample with the broken seal was not your urine sample bottle, and there was absolutely no evidence of any leakage or possible cross-contamination. The urine sample described in the discrepancies section of the Navy Drug Screening Laboratory message was batch "A100," specimen "01" and tested negative. Your specific positive urine sample, however, was batch "A100," specimen "03." Thirdly, the level of the cocaine metabolite in your system virtually eliminated any plausible innocent ingestion defense and suggested that you knowingly used cocaine either on the previous evening, or before reporting to work on the day of your urinalysis test.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, and/or restoration of rank and back pay. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use 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 determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated 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.

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. Additionally, 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. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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 an upgraded characterization of service 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, \_\_\_\_\_

12/16/2022

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Executive Director

Signed by: █