



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

██████████
Docket No. 9530-22
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 22 March 2023. 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 26 February 1992. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program but a waiver was not required.

On 8 February 1994, you were issued two counseling warnings; one for successfully completing Level I treatment and another for your illegal marijuana use. You chose to submit a statement for both counseling warnings. You were issued a third counseling on 17 May 1994, for innocent ingestion of a marijuana laden cigarette. You were then issued a fourth counseling on 29 December 1994, for an alcohol related incident. On 30 December 1994, you received non-judicial punishment (NJP) for making a false official statement.

On 13 March 1996, you entered into a pretrial agreement (PTA) to plead guilty at summary court-martial (SCM) and to waive your administrative board (ADB) despite a recommendation for an Other Than Honorable (OTH) characterization of service. The convening authority accepted the agreement and you were found guilty at SCM, on 16 April 1996, for wrongful use of cocaine. You were then issued a fifth counseling warning regarding your illegal use of cocaine. You were subsequently notified for separation and waived your rights per your pretrial agreement. While awaiting discharge, on 10 May 1996, you received your second NJP for wrongful use of cocaine. Subsequently, you were discharged, on 21 June 1996, pursuant to the terms of your PTA with an OTH.

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 for an upgrade in your characterization of service so you can receive Veterans Affairs benefits and contention that you were not treated fairly. For purposes of clemency and equity consideration, the Board noted you provided multiple advocacy letters.

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 two 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 service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concluded that your 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 separation with an OTH. Additionally, the Board determined that you already received a large measure of clemency when the convening authority agreed to take you to SCM and administratively separate you in lieu of SPCM; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. In particular, the Board noted that you continued to commit drug related misconduct even after your SCM. Finally, 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

4/3/2023

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Executive Director

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