



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. 751-23

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 3 February 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 Marine Corps and entered active duty on 16 October 2000. As part of your enlistment application, on 18 May 2000, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 20 May 2000, and self-reported medical history both noted no neurologic or psychiatric issues.

On 6 June 2002, pursuant to your guilty pleas with one exception, you were convicted at a General Court-Martial (GCM) of: (a) conspiring with another Marine to wrongfully use a controlled substance on or about 15 November 2001, (b) the wrongful distribution of a controlled substance on or about 15 December 2001, and (c) the wrongful use of a controlled substance

(marijuana) on or about 15 November 2001. You were sentenced to confinement for nine (9) months, total forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 9 December 2002, the Convening Authority approved the GCM sentence except suspended any confinement in excess of eight (8) months per the terms of a pretrial agreement. Upon the completion of GCM appellate review in your case, on 23 December 2003, you were discharged from the Marine Corps with a BCD 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, your desire for a discharge upgrade and changes to your reason for separation. You contend that: (a) you have been the victim of an injustice as a result of your BCD and such characterization is stigmatizing and harmful, (b) you have been deprived of your honor and good name, (c) you are still haunted by how your active duty service ended, (d) you want to provide for your family but have been hampered by your BCD, (e) you respectfully seek the opportunity to restore your good name and reclaim your honor that has been tainted by your BCD, and (f) you have displayed immense personal development through your outstanding work ethic, character, and community outreach following your discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your drug-related misconduct constituted a significant departure from the conduct expected of a Marine, and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted 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.

Absent a material error or injustice, the Board declined to summarily upgrade a punitive discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a GCM of serious drug-related misconduct. The Board determined that illegal drug use and distribution 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 also noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Accordingly, the Board determined that there

was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. 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,

2/12/2023

