



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. 1429-23

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 you did not file your application in a timely manner, the statute of limitations was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 6 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service record, and applicable statutes, regulations, and policies.

You enlisted in the United States Marine Corps and commenced a period of service on 6 March 2000. On your enlistment application, you acknowledged a pre-service arrest for Driving While Intoxicated (DWI).

On 5 August 2003, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for the wrongful use of Amphetamine and Methamphetamine. You did not appeal this NJP. On 13 August 2003, you were formally counseled due to your drug use and notified that further misconduct could result in administrative or disciplinary processing.

On or about 28 September 2003, you wrongfully used cocaine and were subsequently counseled for your repeated drug use and directed to seek assistance from substance abuse counselors. On 5 December 2003, you pled guilty at Special Court Martial (SPCM) to violating UCMJ Article 112(a), for the wrongful use of cocaine. You were sentenced to 60 days of confinement,

forfeitures of pay, reduction in rank to E-1, and a Bad Conduct Discharge (BCD). That same day, you were provided your appellate rights and requested placement on voluntary appellate leave.

Prior to placement on appellate leave, on 5 February 2004, you were found guilty at your second NJP for violation of UCMJ Article 86, for a one day period of unauthorized absence (UA). You did not appeal this NJP. Subsequently, you were placed on voluntary appellate leave until such time as the Convening Authority (CA) approved your court martial sentence and your case was docketed for appellate review. On 19 January 2005, the CA approved the sentence and, except the BCD, ordered the sentence be executed. The record of trial was sent to the Navy and Marine Corps Court of Criminal Appeals (NMCCA) for appellate review. On 7 July 2005, you were placed on involuntary appellate leave. On 30 September 2005, NMCCA completed appellate review and forwarded your case for discharge processing. Ultimately, you were discharged from the Marine Corps, on 21 September 2006, with a BCD as a result of court-martial and assigned an RE-4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case in accordance with applicable regulations. These included, but were not limited to: (a) your desire to upgrade your characterization of service and change your narrative reason for separation, (b) your contention that you served for two years after your trial, (c) your rehabilitation efforts, and (d) the impact that your discharge status has had on your life post-service. In your petition, you contend that you suffered a material error of discretion in the issuance of a "Bad Conduct Discharge" after you "received sufficient punishment for [your] misconduct and continued to serve for over two (2) years after [your] Special Court Martial before [you were] actually discharged." You argue that the misconduct, while wrong, was minor and that you should have been provided the opportunity to show that you could, and had, rehabilitated after completing the SACCO program. You also argue that you suffered a material injustice because you have been "improperly stigmatized and harmed by [your] discharge status." For purposes of clemency consideration, the Board noted you provided documentation related to your post-service accomplishments and character letters.

After thorough review of all the evidence, the Board concluded that the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your two NJPs and SPCM, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved drug offenses. 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 your conduct was contrary to Marine Corps values and policy, rendered you unfit for duty, and posed an unnecessary risk to the safety of fellow Marines. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court.

The Board considered your argument that you continued to serve for two years after your trial but disagreed with your assessment, highlighting that you were in an appellate leave status from 17 March 2004 until your discharge on 21 September 2006. Being on appellate leave is not the same as continued service, as there is no entitlement to pay and allowances and you are returned

to your home of record. While maintaining a modicum of benefits while your case receives appellate review, you do not perform any duties in support of your command. The Board felt that this argument misstates your status during the appellate review period. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights when you requested voluntary appellate leave and when you were subsequently placed on involuntary appellate leave. You were afforded the full extent of your appellate rights, and while a punitive discharge may have a negative impact on post-service benefits, the Board did not find a “material injustice” based on your assertion that you feel “stigmatized and harmed” by your discharge status. While the Board commends you on your post service accomplishments and good character, 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,

3/11/2023

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Executive Director
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