

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 1755-23 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 29 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

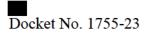
You enlisted in the Marine Corps and began a period of active duty on 9 July 2002. On 9 June 2005, you were issued an administrative remarks (Page 11) counseling concerning your wrongful drug involvement with the usage of cocaine, as identified through a urinalysis and confirmed by the Navy Drug Laboratory . On 20 June 2005, the Substance Abuse Counseling Center (SACC) evaluated you and determined that you did not meet the criteria for cocaine abuse/dependency. On 23 June 2005, the Medical Officer concurred with the SACC determination. On 30 June 2005, you received non-judicial punishment (NJP) for wrongful use of cocaine. On 4 August 2005, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse.

You were advised of your procedural rights; you waived your procedural right to consult with military counsel, and to present your case to an administrative discharge board (ADB). On 26 August 2005, you were issued a Page 11 counseling concerning your refusal for medical treatment for possible substance abuse and/or dependence. You acknowledged that you were provided the Veterans Administration Medical Facility information so that you may locate the nearest treatment facility in your area upon your discharge. Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps. On 2 December 2005, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to drug abuse.

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 change your discharge character of service and contentions that you made a mistake after your second tour in Iraq, you were not offered any help, and you were just kicked out after serving "three years and six months honorably." For purposes of clemency and equity consideration, the Board noted you provided a letter regarding your meritorious promotion, but no supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your positive urinalysis, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. 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. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your unit. Furthermore, there is no precedent within this Board's review, for minimizing a one-time incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. In regard to your contention, your command was under no obligation to send you to drug rehabilitation treatment unless it was determined, by competent medical authority, that you were drug dependent. There is no evidence in your record that shows you were drug dependent. Regardless, the evidence in your record documents that you refused treatment. 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 characterization. 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. 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.

Sincerely,

