



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. 2449-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 April 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 to the Kurta Memo and 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, prior to shipping to recruit training, were found ineligible to serve due to a positive urinalysis drug screening at the Military Entrance Processing Station. Subsequently, you were granted a waiver, and began a period of active duty on 21 August 2006. You served for less than 4 months before the Naval Drug Lab, via message on 20 December 2006, reported a positive urinalysis for cocaine metabolites. As a result, you were subject to Summary Court-Martial (SCM) for a single violation of Article 112a of the Uniform Code of Military Justice due to your illegal use of a controlled substance.

Subsequently, you were notified of recommendation for your administrative separation under Other Than Honorable (OTH) conditions for the reason of misconduct due to drug abuse. You elected to waive your rights to consultation with legal counsel and a hearing before an administrative separation board. After approval of your separation, you were discharged, on 13 February 2007, with an OTH 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 to upgrade your discharge to “Honorable” and to change both your narrative reason for separation and reentry code, as well as your contentions regarding your family history of drug involvement to which you were exposed both during your youth and upon your return home following boot camp, which preceded your positive urinalysis for cocaine use. The Board also noted your contentions that the attitude of your recruiter with respect to your drug use and waiver adversely affected your perspective on in-service drug use by normalizing it rather than censuring it, and that you should not have been permitted to return to your home environment on the Recruiter’s Assistance Program given that you came from a drug-heavy community. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments and 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 noted that you were allowed to enter active duty upon receiving a drug waiver. In the Board’s opinion, you were afforded an opportunity to correct your behavior and chose not to do so. Finally, the Board noted you only served four months and 20 days before being discharged for misconduct. 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. While the Board favorably considered your evidence of post-discharge rehabilitation and behavior, which included four character letters in support of your contentions of good character and evidence of your academic achievements, degree, and certificates, 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, the Board determined that your request does not warrant relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

5/9/2023

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