



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. 2821-23

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 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 14 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 this 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 commenced a period of active duty on 20 October 1999. On 21 May 2001, you were formally counseled for underage drinking, and you were notified failure to take corrective action could result in the initiation of administrative separation proceedings. On 5 June 2000, you received non-judicial punished (NJP) for unauthorized absence (UA). On 27 August 2001, you were convicted by civil authorities for driving under the influence (DUI). You were formally counseled regarding your DUI, and you were further notified additional misconduct may result in the initiation of administrative separation proceedings. On 16 November 2001, you received your second NJP for failure to obey a lawful order, and drunken operation of a vehicle. You were subsequently counseled for breaking restriction on 19 December 2001 and for your non-recommendation for promotion in March and May 2004, due to your lack of discipline, leadership, and judgement.

On 25 May 2004, you were found guilty at Special Court Martial (SPCM) for wrongful use of cocaine and methamphetamine. You were sentenced to a Bad Conduct Discharge (BCD), confinement, reduction in rank to E-1, and forfeitures of pay. After completion of the appellate

review on your case, you were discharged from the Marine Corps with a BCD and assigned an RE-4 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 characterization and your contentions that you were discharged with a BCD after 4 years and 9 months of active service without incident, you were young at the time of your misconduct, since your discharge you have lived a positive life, and you are seeking veterans' benefits. For purposes of clemency and equity consideration, the Board noted you did not provide 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 NJPs, civil conviction, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 a BCD. While the Board commends you for your post-discharge 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,

5/3/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]