



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. 3247-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 12 May 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 U.S. Marine Corps and entered active duty on 21 January 1992. On 16 November 1991, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 18 November 1991, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On your enlistment application, you disclosed pre-service marijuana use.

On 24 January 1994, you received non-judicial punishment (NJP) for insubordinate conduct when you used disrespectful language that included a derogatory racial slur towards a Sergeant. You did not appeal your NJP.

On 15 April 1994, your command issued you a "Page 11" where you acknowledged that you were

eligible but not recommended for promotion to Corporal (E-4) due to your recent NJP. You did not submit a Page 11 rebuttal statement.

On 21 April 1994, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana. On 18 May 1994, the suspended portion of your January 1994 NJP was vacated and enforced due to continuing misconduct. On 18 May 1994, you also received NJP for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

On 24 May 1994, the Consolidated Drug and Alcohol Center (CDAC) evaluated you for substance abuse and determined you to be a drug abuser. The CDAC report to your commanding officer noted the following: "SNM was counseled and given the information for contacting a Veteran's Administration Hospital nearest to SNM's home of record for treatment after discharge from USMC."

On 11 October 1994, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You expressly waived in writing your rights to consult with counsel, submit written rebuttal statements, and to request an administrative separation board. Ultimately, on 7 December 1994, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization 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 to change your narrative reason for separation and reentry code. The Board considered your contentions that: (a) your chain of command made a material error of discretion when they discharged the Applicant without an opportunity to rehabilitate and mentor you, (b) there was no evidence your potential for rehabilitation was ever considered as a possibility, (c) there was no evidence you received, or were even offered, rehabilitation or drug and alcohol abuse treatment services, (d) you have been deprived of your honor and good name, which continues to cause you undue harm to this day, (e) your command failed to provide you an adequate opportunity to overcome his single incident of misconduct, and (f) you have been unjustly prejudiced and stigmatized because of your characterization of service. For purposes of clemency and equity consideration, the Board considered the evidence you submitted 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 as to deserve a discharge 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 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. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that 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.

The Board was not persuaded by your arguments that the Marine Corps made an error of discretion to process you for an administrative separation. The Board noted that your drug abuse required mandatory processing for separation and did not give the command any discretion to or not to process you for separation unlike after your first NJP. The Board also noted, contrary to your contention, that you had two separate documented instances of misconduct and not just one single incident. Moreover, the Board also noted that CDAC staff counseled you concerning your VA treatment eligibility. If you decided not to pursue such treatment, that would have been due solely to your own personal decision to decline any offered treatment.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.5 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

Further, 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 determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

5/15/2023

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Deputy Director
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