



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. 10200-23
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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 11 December 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 United States Marine Corps and commenced a period of active duty on 17 November 1997. On your enlistment application, you acknowledge pre-service drug use. On 4 October 2000, you pleaded guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for unauthorized absence (UA) from 2 February 2000 to 3 April 2000, and Article 112(a), for three specifications of drug related conduct, specifically: wrongfully distributing marijuana, wrongfully distributing Lysergic Acid Diethylamide (LSD), and wrongfully using marijuana. You were sentenced to 150 days of confinement, forfeitures of pay, reduction to E-1, and a Bad Conduct Discharge (BCD). After completion of appellate review, on 19 July 2002, you were discharged from the Marine Corps with a BCD as issued by the court and assigned a "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: (1) your desire to change your discharge characterization, (2)

your contention that you were deemed guilty by association, and caught up with individuals who were being investigated as part of a sting operation, (3) your assertion that you pled guilty at SPCM to avoid a longer period of confinement, and (4) your argument that you were never drug tested, so there is no evidence that he was partaking in the illegal activities. For purposes of clemency and equity consideration, the Board noted that you provided background checks as evidence of post-service good conduct.

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 SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved drug distribution 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 illegal drug distribution and use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. The Board felt that you received advice from qualified counsel throughout your court martial and that you were aware of your rights. The Board concluded that there was no evidence to support your innocence. On the contrary, the Board highlighted that during a guilty plea, the judge asks a series of detailed questions to ensure that the accused is provident prior to accepting a guilty plea. Further, your case received complete and thorough appellate review, during which no legal errors were identified. 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 did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good conduct, 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,

12/25/2023

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Executive Director

Signed by: █