



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. 10572-23

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 February 2024. 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.

During your enlistment processing you disclosed pre-service marijuana use and two counts of contributing to the delinquency of a minor charges. You were granted an enlistment waiver, enlisted in the U.S. Marine Corps (USMC), and began a period of active service on 16 April 1996. You received your first nonjudicial punishment (NJP), on 11 December 1997, for failing to pay due debt to a █ Taxi and making a false statement. You received multiple counseling entries for violations of regulations and lack of integrity for wearing medals and service stripes that you were not entitled to on two separate occasions, presenting a false written statement, and for not being recommended for promotion as a result of failing multiple physical fitness tests. On 29 November 2000, you received a second NJP for wrongfully using a

controlled substance (methamphetamines). You were found to be an abuser of alcohol and drugs but declined treatment. You were subsequently notified of your pending administrative separation processing by reason of misconduct as evidenced by your drug abuse, at which time you elected your right to consult with counsel but waived your right to have your case heard before an administrative discharge board. On 11 January 2001, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of drug abuse. On 12 January 2001, you were so discharged.

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 characterization of service and your contentions that: (1) the type of discharge you received is unwarranted, (2) you never did any of the things of which you were accused, (3) you were not provided legal counsel, and (4) you have become disabled and need a change to your discharge in order to be seen at your local Department of Veterans Affairs for medical reasons. For purposes of clemency and equity, the Board noted you did not provide documentation describing post-service accomplishments or 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined illegal drug involvement 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 considered the likely negative effect your conduct had on the good order and discipline of your unit and discrediting effect it likely had on the Marine Corps. Further, the Board noted you provided no evidence to substantiate your contentions. Therefore, the Board was not persuaded by your argument of innocence and determined the presumption of regularity applies in your case. 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 an OTH. 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 that your request does not merit 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,

2/15/2024

