



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. 10688-23
Ref: Signature Date

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Dear █

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 January 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).

You enlisted in the U.S. Marine Corps and began a period of active duty service on 19 July 2005. Your pre-enlistment physical examination, on 19 April 2005, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 21 April 2005, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." You disclosed pre-service marijuana usage on your medical history.

On 16 December 2005, you received non-judicial punishment (NJP) for failing to obey a lawful order and for unauthorized absence (UA). You did not appeal your NJP. On 26 September 2007 you received NJP for failing to obey a lawful order or regulation. You did not appeal your second NJP. On the same day, your command issued you a "Page 11" retention warning (Page 11) documenting your NJP. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or limitation of further service. You did not

submit a Page 11 rebuttal statement.

On 13 May 2008, a Navy Drug Screening Laboratory message indicated you tested positive for both amphetamines and MDMA (aka "Ecstasy"). On 19 June 2008, a Navy Drug Screening Laboratory message indicated you again tested positive, this time for both methamphetamines and MDMA. On 20 June 2008, your command issued you a Page 11 documenting your illegal drug use, specifically cocaine and methamphetamines. You acknowledged that separation processing for drug abuse was mandatory, and you did not submit a Page 11 rebuttal statement.

On 23 July 2008, you received NJP for the wrongful use of cocaine, amphetamines, and MDMA. You did not appeal your NJP.

On 27 June 2008, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. On 16 July 2008, you consulted with counsel and expressly waived in writing your right to request an administrative separation board. Ultimately, on 27 January 2009, 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 contentions that: (a) you request an upgrade because the CO is now authorized to have that choice in positive urinalysis cases, and (b) you are sorry for what you did, but you were under an extreme amount of pressure because your two best friends had recently committed suicide. For purposes of clemency and equity consideration, the Board 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. 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 is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. 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 pattern of misconduct and polysubstance abuse 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 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 3.79 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 totaling three (3) NJPs was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

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. 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 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,

1/30/2024

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