



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 2399-24  
Ref: Signature Date

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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 25 March 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, 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 began a period of active duty on 28 July 2008. At the time of your enlistment, you acknowledged and signed the Marine Corps policy concerning the use of illegal drugs. On 12 January 2009, you received nonjudicial punishment (NJP) for two instances of failure to obey a lawful order. On the same date, you were counseled and advised that failure to take corrective action could result in administrative separation. On 28 January 2009, you received a second NJP for wrongful use of over the counter drugs to become intoxicated. On the same date, you were counseled and advised that failure to take corrective action could result in administrative separation. On 6 March 2009, you received a third NJP for consuming alcohol while in restrictions, breaking restriction, leaving your room without a buddy, and making a false official statement. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and misconduct due to drug abuse. You decided to waive your procedural right and your commanding officer (CO) recommended an Other Than Honorable (OTH) discharge characterization of service. The

separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 25 March 2009, 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 for a discharge upgrade and contentions that: (a) you were accused of drug testing failure when a group of Marines were caught with a female in the barracks after curfew, (b) you were in bed and away from the group, (c) you were tested for drugs and the results came back as negative, (d) you were told by your CO that you owe it to the Marine Corps to write a letter waiving your rights to a board hearing, (e) your CO told you to write a statement in which you are willing to waive your right to a hearing and request that you would show some improvements on your personal behalf, (f) you enrolled in college and began working in aviation management, (g) you completed a bachelor's degree in business management and worked for █ and █ for a period of seven years, (h) you retired and became a K-12 teacher, (i) you have never used drugs and never abused alcohol. For purposes of clemency and equity consideration, the Board noted you submitted copies of six character letter of support.

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 it included a drug related offense. 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 noted that drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Furthermore, the Board noted you provided no evidence, other you're your statement, that substantiates your contentions that you were denied due process. Finally, the Board noted that you were given the opportunity to correct your conduct deficiencies but continued to commit misconduct.

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 characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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 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 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, \_\_\_\_\_  
4/16/2024

