



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

█  
Docket No. 4062-24  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 June 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

After a period of service with Army National Guard, you entered active duty with the Marine Corps on 4 January 1985. On 24 November 1987, you were convicted by a General Court-Martial (GCM) for violations of the Uniform Code of Military Justice (UCMJ) to include an Article 80 offense for an attempt to distribute a quarter-ounce of cocaine as well as three specifications under Article 112a for wrongful distribution of .84, .9, and 2.31 grams of cocaine. You were sentenced to a Dishonorable Discharge, eight years confinement at hard labor, reduction to the paygrade of E-1, and total forfeitures of pay and allowances. After all levels of review, your punitive discharge was ordered executed and you were dishonorably discharged on 23 April 1990.

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 discharge and your contentions that your discharge inadvertently resulted from your attempt to intervene on behalf of another Marine who had gotten involved with childhood acquaintances of yours who you knew “from the streets” prior to enlisting. You state that you had enlisted to escape that lifestyle during the crack-cocaine era of the 1980s but felt burdened to protect a fellow Marine who had begun using drugs and owed money to your former friends. You assert that your charges originated from your attempts to “broker peace” to avoid violence, but deny ever seeking, touching, or using drugs. You further claim that you were a pawn in a more extensive investigation after being asked to be an informant, although you did not specify the government agency involved in this purported action. Compared to the individuals who were at the center of this investigation, you contend to have rehabilitated your life compared to your former associates who have since either died or are serving life sentences. For purposes of clemency and equity consideration, the Board noted you submitted four letters 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 GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug distribution charges. The Board determined that illegal drug distribution 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. Further, the Board noted that the transcript of the proceedings from your record of trial was not available for review with respect to your contentions of participating as an informant, which the Board found would likely have been addressed during your trial proceedings. Therefore, absent evidence to support your contentions, the Board determined you were properly convicted by the GCM and sentenced according to the severity of your misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a DD. 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.

For your reference with respect to your trial records, the Board noted that requests concerning the military justice system and individual courts-martial records of trial are processed via Freedom of Information Act Requests (FOIA) requests, which may be directed to the Office of the Judge Advocate General of the Navy, Code 40, at [foiamiljus@navy.mil](mailto:foiamiljus@navy.mil) or (202) 685-7064.

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,

7/19/2024

