



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

█
Docket No. 5292-24
Ref: Signature Date

█
█
█

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 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 29 May 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 on 10 March 2003. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program.

On 15 September 2003, you received non-judicial punishment (NJP) for failure to obey an order or regulation. On 4 May 2007, you were convicted by a special court-martial (SPCM) for making a false official statement to an NCIS agent and two specifications of distributing marijuana. You were sentenced to confinement, forfeiture of pay, reduction in rank and a Bad Conduct Discharge (BCD). After completion all levels of review, on 2 July 2008, you were discharged with a BCD.

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 your contentions that you were a model Marine until you made a mistake due to lack of judgment, your discharge has been a detriment to you and your family, and you have been a model citizen since your discharge. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no supporting 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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two drug offenses. 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. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a BCD. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. The Board was not persuaded by your argument that your misconduct was a mistake based on lack of judgement and noted you were convicted of two counts of drug distribution, in addition to lying to NCIS.

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

6/11/2024

