



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. 5503-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 1 July 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.

You enlisted in the Marine Corps and commenced active duty on 12 November 1991. On 25 May 1993, were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct; specifically for failing to maintain adequate funds in your checking account which resulted in two returned checks. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 29 May 1995, you were found guilty at Special Court Martial (SPCM) of wrongful use of cocaine, incapacitation for duty by previous overindulgence of liquor, and ten days of

unauthorized absence (UA). You were sentenced to reduction in rank to E-1, confinement at hard labor, and a Bad Conduct Discharge (BCD). You were released from confinement on 19 June 1995, waived clemency, and commenced appellate leave on 19 July 1995. Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 1 August 1996.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 27 June 2008, based on their determination that your discharge was proper as issued.

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 change your discharge characterization of service and your contentions that you served your obligated service, you had good conduct during all of your time in the military, you made poor choices due to your youth, and post-discharge you have been a productive member of society. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug 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 you had not yet served your full obligated term when you were sentenced to a BCD at SPCM, and the remainder of your time was either spent in confinement or on appellate leave. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. However, in your case, several serious incidents of misconduct formed the basis for your BCD.

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

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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

[REDACTED]