



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. 6392-24
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 16 September 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 Marine Corps and commenced active duty on 19 August 1986. On 7 October 1987, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 30 December 1987, you received NJP for wrongful use of methamphetamine. On 3 August 1988, you received a third NJP for wrongful use of cocaine.

Consequently, you were notified of pending administrative separation processing with OTH discharge by reason of misconduct due to pattern of misconduct and drug abuse. You consulted with legal counsel and requested an Administrative Separation Board (ADB). Subsequently, you waived your right to an ADB. Your commanding officer recommended you be discharged with an OTH. After a legal review, you were so discharged on 18 October 1988.

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 characterization and change your narrative reason for separation and separation authority. The Board also carefully considered your contentions that an upgrade is warranted because the circumstances of your discharge can be squarely attributed to a pattern of psychological and mental abuse from a former spouse, and because of your exemplary character and community service in the decades since your discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your legal brief with exhibits.

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 NJPs, these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that your misconduct involved two drug offenses. 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 also observed that you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct. Based on the fact you were allowed to remain in the Marine Corps after your first drug offense, the Board concluded you already received a large measure of clemency.

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 you on 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 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,

9/26/2024

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