



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. 6544-24
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 30 August 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).

You enlisted in the Marine Corps and began a period of active duty on 26 July 1999. As part of your enlistment processing, you were granted a waiver for pre-service drug involvement related to marijuana. On 31 May 2000, your drug-use screening urinalysis was reported for a positive result for use of MDA/MDMA, more commonly referred to as "Ecstasy." As a result, you accepted nonjudicial punishment (NJP) for violation of the Uniform Code of Military Justice (UCMJ) under Article 112a, due to wrongful use and possession of a controlled substance. You were awarded a reduction to the paygrade of E-1, 45 days of restriction and extra duty, and a suspended forfeiture of \$503 pay. You were also processed for administrative discharge for misconduct due to drug abuse; however, on 24 August 2000, your approved discharge under Other Than Honorable (OTH) conditions was suspended for a period of 12 months, provided you avoided further misconduct.

On 10 October 2000, a subsequent drug lab message reported that your drug screening urinalysis was again positive, this time for marijuana use. Your chain of command submitted a request to vacate the suspended OTH discharge, notified you accordingly, and issued you an advisement of rights incident to this action. You also accepted a second NJP, on 26 October 2000, for your violation of Article 112a due to wrongful use and/or possession of the control substance. You were awarded another 45 days of restriction and extra duty, and forfeiture of \$502 pay per month for two months.

The request to vacate your suspended OTH administrative discharge was approved on 20 December 2000; however, you committed additional drug-related misconduct. On 28 December 2000, you were tried and convicted by Special Court-Martial (SPCM) for a single charge and specification, under Article 112a of the UCMJ, for again wrongfully using the controlled substance "Ecstasy." Your sentence included a Bad Conduct Discharge (BCD) and three months confinement, although confinement in excess of 30 days was suspended. You declined rehabilitation treatment following your release from confinement. The findings and sentence of your SPCM were affirmed by the Navy-Marine Corps Court of Military Appeals and you were separated, on 2 May 2002, upon the execution of your Bad Conduct Discharge. Your record of discharge documents that you receive a rifle expert badge, with no other awards documented therein or elsewhere in your service records.

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 change your narrative reason for separation to "Secretarial Authority." You contend that your discharge is inequitable upon consideration of the overall quality and length of your service and the severity of the punishment in light of your youth and immaturity over 22 years ago, in addition to the fact that you voluntarily confessed to the allegations against you. You state that you served honorably for more than two years and nine months and received numerous awards and positive marks. You further contend that your first drug abuse misconduct occurred after you became friends with a group of people who were a negative influence and invited you to attend a "rave" where you got "swept up in the moment" and used Ecstasy; you state that this same group of individuals was later at a social gathering where their influence again led to your marijuana use. You also argue that you would have corrected your mistake and continued to serve honorably if you had been allowed to do so; you likewise stated that a strong argument could be made that no punitive discharge would have been issued if you had been allowed to mitigate or correct your behavior. For purposes of clemency and equity consideration, you submitted evidence attesting that you are a great father and active member of your community, you have worked with the ██████████ and ██████████ on natural disaster recovery projects across multiple states and territories, to include hurricane assistance to ██████████, you have repaid your debts to society, have moved forward in a positive light as a model citizen with no criminal record since your discharge, and you either currently own and run a commercial poultry farm or recently sold this farm for considerable profit.

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 and SPCMs, outweighed these mitigating factors. In making this finding, the Board

considered the seriousness of your misconduct and the fact it included multiple 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. Further, the Board noted that your first drug-related offense occurred within the first 10 months of your active duty service and that you began voluntary appellate leave after approximately 18 months of active service. Therefore, the total net active service of two years, eight months, and 14 days documented in your discharge record includes the period from 2 February 2001, during which you were initially on voluntary and later involuntary leave, until your punitive discharge was executed on 2 May 2002.

The Board also observed that the only award documented in your discharge is your rifle expert badge and, although your official military personnel file (OMPF) lacks record of your proficiency and conduct marks, Marine Corps regulations regarding the issuance of marks incident to NJP or court-martial conviction would have resulted in adverse marks below the minimum standard of 4.0 required for an "Honorable" discharge. Given the brevity of your service, in contrast to the frequency of your misconduct throughout that time, the Board found that, under the presumption of regularity that you would have been issued marks consistent with the policy outlined in applicable service regulations and, therefore, would not have had a positive final proficiency and conduct average during your relatively brief period of service.

Regarding your assertion that you had never used drugs before the first incident at the rave, the Board noted your Record of Military Processing (DD Form 1966/1) submitted at the time you applied to enlist clearly documented a waiver which reflects that you admitted to pre-service drug use at the time of your enlistment.

Additionally, the Board was not persuaded by your contention that you would have corrected your mistake and continued to serve honorably if you had been allowed to do so, or that no punitive discharge would have been issued if you had been allowed to mitigate or correct your behavior. The Board found that the evidence of record is wholly inconsistent with this argument. In fact, your initial use of Ecstasy resulted in your separation with an OTH characterization being approved; however, in a show of clemency, you were granted the extraordinary opportunity of a suspended discharge. Therefore, contrary to your argument, the Board found that you were afforded an incredible second chance but failed to avail yourself of that opportunity since you again tested positive for drug use. At that point, had you refrained from further misconduct, your suspended separation would have been vacated and you would have administratively discharged under OTH conditions without a criminal record and without confinement or a punitive discharge. But, again, you continued to commit misconduct with a third instance of drug abuse which resulted in your SPCM conviction and punitive discharge. Noting that your chain of command could have pursued SPCM charges at the outset of your first positive urinalysis, the Board found that you received more than ample opportunity to mitigate or correct your behavior, and your resulting punitive discharge reflected your inability or unwillingness to do so.

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 for your post-discharge rehabilitation and 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 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,

9/20/2024

