



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

[REDACTED]
Docket No. 8678-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 reconsideration application on 13 December 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 U.S. Marine Corps and began a period of active duty service on 7 July 1999. On 6 July 1998, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your enlistment physical examination, on 8 July 1998, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You did not disclose any pre-service alcohol or drug abuse on your enlistment application, which directly conflicts with your current disclosure on your discharge upgrade petition that you have been an alcoholic and drug addict since age thirteen (13).

On 13 December 1999, your command issued you a "Page 11" retention warning (Page 11) for failing to be at your appointed place of duty. The Page 11 expressly advised you that a failure to

take corrective action may result in judicial proceedings or administrative separation. You did not elect to submit a Page 11 rebuttal statement.

On 16 February 2001, your command issued you a Page 11 notifying you that you were going to be processed for an administrative separation for testing positive for a controlled substance (marijuana). On 6 March 2001, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP. On 12 March 2001, your command issued you a Page 11 again notifying you that you were going to be processed for an administrative separation under Other Than Honorable conditions (OTH) for testing positive for a controlled substance.

On 11 May 2001, you commenced an unauthorized absence (UA). Your command declared you to be a deserter, and UA terminated on 10 June 2001.

On 27 July 2001, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for: (a) your 30-day UA, and (b) the wrongful use of a controlled substance (Ketamine). You were sentenced to confinement for 120 days, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). Pursuant to the pretrial agreement you signed, all confinement in excess of 60 days was suspended. On 7 January 2002, the Convening Authority (CA) approved the SPCM sentence as adjudged.

On 27 May 2002, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence as approved by the CA. Upon the completion of SPCM appellate review in your case, you were discharged from the Marine Corps with a BCD and were assigned an RE-4B reentry code on 16 September 2002.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) one (1) positive result for marijuana should not have been grounds for a BCD, (b) you understand that your actions after a positive UA were unwise, (c) you have been carrying this shame of your BCD for long enough, (d) you have been an alcoholic and drug addict since you were 13 years old, (e) AA/NA changed your life for the better for many years, and you are back in the 12 step programs today, (f) you attend church six days a week, are involved in your community, and you volunteer your time to the less fortunate, and (g) you feel like you are a responsible, productive, caring member of society, and you would greatly appreciate some help from the Department of Veterans Affairs in any way. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application, which consisted solely of the written information you provided on your DD Form 149.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct

and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your serious misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined that your deliberate concealment of certain material facts regarding your pre-service drug and alcohol abuse was willful and intentional and demonstrated you were unfit for further Marine Corps service. The Board concluded that had you properly and fully disclosed the fact that you had been an alcoholic and drug addict since age 13 on your enlistment application, you would likely have been disqualified from enlisting in the Marine Corps.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The Board determined that characterization with an OTH or BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. Even in light of the Wilkie Memos 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,

1/8/2025
[REDACTED]