



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. 8750-24
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 22 November 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 service on 13 December 1995. As part of your enlistment application, on 25 October 1995 you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 26 October 1995, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 7 April 1996, you commenced a period of unauthorized absence (UA) that terminated on 12 April 1996. Per your attorney's brief in support of your petition, he stated: "After completing training, [you] returned home to █. He had been ordered to report to base in █ on April 7. However, he remained home from April 7 to April 12."

On 22 April 1996, you commenced a second UA that terminated on 25 April 1996. Upon your surrender to your command after your second UA, you admitted to smoking marijuana daily while you were in a UA status and consuming alcoholic beverages while underage.

On 2 May 1996, you underwent a preliminary screening at the Counseling and Assistance Center. Your evaluation revealed that you were psychologically dependent on both alcohol and drugs. Your evaluator recommend that you attend Level III inpatient rehabilitation treatment, and to attend AA meetings 2-3x per week.

On 7 May 1996, you were convicted at a Summary Court-Martial of: (a) two (2) separate UA specifications (5 days and 3 days), (b) failing to obey a lawful order, and (c) the wrongful use of a controlled substance (marijuana) on divers occasions. You were sentenced to forfeitures of pay, and confinement for thirty (30) days.

On 31 May 1996, you formally waived in writing any and all treatment and counselling offered to you by the Marine Corps. On 26 June 1996, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived, in writing, your rights to consult with counsel and to request an administrative separation board.

On 21 August 1996, the Staff Judge Advocate to the Separation Authority (SA) determined your separation proceedings were legally and factually sufficient. On 30 August 1996, the separation authority approved and directed your discharge for misconduct with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, after serving for just under eight months on active duty, on 30 August 1996, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-4B reentry code.

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 change to your reason for separation. You contend that: (a) facts are present in the record that mitigate your misconduct, (b) you were struggling with your sexuality and were troubled, and as a result engaged in two (2) UA periods and consumed alcohol underage, and (c) your post-discharge conduct shows rehabilitation, mitigates your misconduct, and weighs in favor of a discharge upgrade under the Board's clemency power. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

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 as to deserve a discharge 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 that illegal drug use is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use is still against Department of Defense regulations and its use in any form is still not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of

an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.3 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your substandard performance of duty and cumulative misconduct which further justified your OTH discharge characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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,

12/10/2024

