



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. 9118-24
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 2 October 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 commenced active duty with the Marine Corps on 7 January 2003. On 7 May 2003, you were counseled on consuming alcohol under the legal age of 21. On 1 October 2003, you received non-judicial punishment (NJP) for wrongfully consuming alcohol as a minor. On 1 March 2004, you were counseled on driving under the influence (DUI) and registering a BAC of .16. On 4 March 2004, you were recommended for residential treatment for your alcohol abuse. On 19 March 2004, you received NJP for drinking alcohol in the barracks under the age of 21 and disobeying a lawful order not to drink alcohol. On 30 June 2004, a summary court-martial (SCM) convicted you of wrongfully consuming alcohol under the age of 21 and incapacitated for the performance of duty. On 19 July 2004, you received another assessment from Substance Abuse Counseling Center (SACC) that noted you continued your underage drinking and refused treatment. On 22 July 2004, you received a final assessment from the SACC, which diagnosed you as alcohol dependent and recommended you receive residential treatment while deployed. However, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct and alcohol rehabilitation failure. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service.

The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 13 October 2004, you were so discharged.

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 contentions that you would like to receive veterans' benefits, and you were waiting to receive treatment for your alcohol addiction before being discharged. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, 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. Finally, contrary to your contention that you were waiting to receive treatment for your alcohol addiction, the record clearly shows that SACC recommended you receive residential treatment on two separate occasions and you refused the treatment.

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. 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 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,

10/28/2024

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