



Docket No. 9451-24
Ref: Signature Date

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 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 this 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 were granted an enlistment drug waiver and signed a statement of understanding regarding the U.S. Marine Corps' policy concerning the illegal use of drugs. On 14 July 1997, you enlisted in the U.S. Marine Corps and began a period of active duty. On 28 May 1998, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. On 9 June 1998, a substance abuse evaluation determined that your drug use was an isolated incident. On 9 July 1998, a summary court-martial (SCM) found you guilty of unauthorized absence (UA), disrespect towards a noncommissioned officer, two specifications of failure to obey, and larceny. The court sentenced you to 30 days of confinement and forfeiture of pay.

Consequently, you were notified of your pending administrative processing by reason of misconduct due to drug abuse. Your commanding officer forwarded your administrative separation package to the separation authority recommending you be discharged with an Other Than Honorable (OTH) characterization of service adding, “[Petitioner] has demonstrated his

willingness to not follow rules and regulations set forth by this command and the Marine Corps. His platoon commander has stated in his statement that [Petitioner] makes no effort to work or to impress his command. I see no rehabilitative potential in this Marine, and find that his separation will be the best thing for the Marine Corps.” Although the separation authority concurred with the recommendation and directed an OTH, you were discharged with an erroneously assigned General (Under Honorable Conditions) (GEN) characterization of service on 18 August 1998.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge characterization of service and your contentions that: (1) you are asking forgiveness for your stupid mistake as a young kid who did not think of the consequences, (2) you believe you deserve an upgrade because you were a good Marine, completed all of your tasks to standard and your performance as a mechanic was outstanding, (3) you were awarded the good conduct medal, (4) due to your discharge, your family and friends look down on you, (5) you suffered major depression, couldn’t find a job, and lost your family, (6) you love your children and would like to show some kind of achievement, and (7) granting an Honorable discharge would be something to be proud of and show your children. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishment or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. 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. Regarding to your contention that your misconduct was the result of your youth, the Board felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. The Board also observed that you were provided an opportunity to correct your conduct deficiencies and chose to continue to commit misconduct; which led to your discharge. Finally, as explained above, you already benefitted from an administrative error that rewarded you with a GEN characterization of service vice OTH.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continued to warrant an OTH characterization¹. 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

¹ Despite the fact your DD Form 214 erroneously indicates you were discharged with a GEN characterization of service, the Board concluded your record supports the approved OTH characterization. Notwithstanding the Board’s finding, it determined that existing policy does not allow for the Board to change a record in a manner that will negatively affect the Petitioner. Therefore, your DD Form 214 will continue to reflect the erroneous GEN characterization of service.

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,

1/16/2025

