



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

Docket No. 11738-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 April 2025. 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 Marine Corps and began a period of active duty on 16 January 2007. From February 2008 to August 2008, you were deployed to Iraq. During this period, you were found guilty by a summary court-martial (SCM) of false official statement and wrongful use and possession of valium. On 9 September 2008, your command referred you to the Substance Abuse Counseling Center for a drug dependence screening. The screening determined a diagnostic impression of “no diagnosis” for drug dependence; no treatment was recommended and you were returned to duty. On 19 September 2008, you received non-judicial punishment (NJP) for absence from your appointed place of duty. On 5 November 2008, you received your second NJP for unauthorized absence, failure to obey a lawful written order, and dishonorably failing to pay a debt by attempting to flee from a taxicab without paying the tax fare and later

found asleep intoxicated. Additionally, you were issued an administrative remarks (Page 11) retention warning counseling concerning your recent NJP.

Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were informed that the least favorable characterization of service you may receive is Under Other Than Honorable (OTH) conditions. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an OTH characterization of service. The CO's stated in pertinent part:

I have personally interviewed [Petitioner] and recommend he be discharged. [Petitioner] is an intense, personable young man who claims to want to remain in the Marine Corps. However, unlike the other Marines in this incident he actively sought out more Valium from the Iraqi Police.....and distributed Valium to other Marines in his squad. Since being removed from Echo Company [Petitioner] has not posed a problem for H&S, however he has also not shown any drive to demonstrate the singular character, motivation or potential necessary to justify retention of a multiple incident drug user and distributor. While [Petitioner] vehemently claims to want to remain in the Marine Corps, in the intervening seven months since his removal from his Company he has been marking time instead of demonstrating that he rates special consideration. I reviewed the character statements of [Petitioner's] chain of command prior to interviewing the Marine and share their disappointment in a Marine that had the potential to complete a successful enlistment but chose to toss it away by knowingly using drugs in a combat zone and recruiting his fellow Marines to do the same.

Prior to the SA's decision, on 27 February 2009, you received your third NJP for insubordinate conduct and drunk and disorderly conduct. Ultimately, the SA approved the CO's recommendation and you were so discharged on 4 April 2009.

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 character of service in order to obtain Department of Veterans Affairs (VA) benefits and contentions that: (1) you suffered from PTSD after your combat tour in Iraq, (2) you did not seek care due to the atmosphere of the Marine Corps, (3) you only used a substance once to help reduce your fear and anxiety at the time, (4) you never disobeyed an order or shirked your duties; you supported your unit and the Marine Corps, and (5) you began recognizing that you suffered from PTSD due to your "combat" and tried to seek care from the VA and were denied. Additionally, the Board noted you checked the "PTSD" box on your application, but you did not respond to the Board's request for evidence in support of this claim. For purposes of clemency and equity consideration, the Board considered the totality of your application, which consisted solely of your petition without any other additional documentation.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your unit. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. The Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions.

Furthermore, the Board noted that you were provided opportunities to correct your conduct deficiencies during your service but you continued to commit additional misconduct; which subsequently led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your unit. Finally, the Board observed that you did not provide any evidence, other than your statement, to substantiate your contention that your drug abuse only involved a single instance of wrongful use. However, the Board noted in your CO's comment that you distributed Valium to other Marines. Finally, 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 and discipline clearly merited your discharge. 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,

4/30/2025

