



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

██████████
Docket No. 289-25
Ref: Signature Date

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████████████████████

Dear ██████████

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 28 February 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 U.S. Marine Corps and began a period of active-duty service on 26 January 2004. Your pre-enlistment physical examination on, 9 May 2003, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. On 7 May 2003, you also signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs."

On 7 April 2005, a Navy Drug Screening Laboratory message indicated that you tested positive

for cocaine at a level above the Department of Defense established minimum testing cutoff level. On 17 May 2005, pursuant to your guilty plea, you were convicted at a Summary Court-Martial (SCM) for the wrongful use of a controlled substance (cocaine). The Court sentenced you to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, restriction for thirty (30) days, and hard labor without confinement for thirty (30) days. The Convening Authority approved the SCM sentence as adjudged.

On 19 May 2005, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel and expressly waived your right to request an administrative separation board.

On 27 June 2005, the Staff Judge Advocate to the Separation Authority (SA) determined that your separation proceedings were legally and factually sufficient. On 13 July 2005, the SA approved and directed your discharge with an under Other Than Honorable conditions (OTH) characterization. On the same day, 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) you were repeatedly exposed to racial harassment as a Native American and it really affected your ability to do your job including added stress and feelings of exclusion from the group, (b) after your deployment, you started to notice changes in your behavior including difficulty sleeping, hostility towards others, irritability, and an inability to relax, (c) out of a sense of desperation, you turned to drug and alcohol use to cope with the stress and exhaustion, (d) you are seeking a discharge upgrade so you can access VA healthcare benefits; you are employed full-time and just want to have affordable healthcare, (e) post-service you have struggled mightily with issues from PTSD including substance abuse, homelessness, family problems, legal problems, occupational problems, and health problems, and (f) you enrolled in a Veterans Treatment Court program and they helped you with getting housed, employed, mental health treatment, and your health. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's request for supporting evidence of your claims. 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 also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 3.4 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 misconduct was not minor in nature and that your conduct marks during your active-duty career were a direct result of your serious misconduct and further justified your OTH 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 blatant 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 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,

3/17/2025

