



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

██████████
Docket No. 2758-25
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 20 June 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 21 April 1997. As part of your enlistment application, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." On your enlistment application you disclosed pre-service marijuana use. Your enlistment physical examination, on 2 April 1997, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 20 November 1997, you received non-judicial punishment (NJP) for: (a) insubordinate conduct, and (b) four (4) separate unauthorized absence offenses. You did not appeal your NJP.

On 5 February 1999, your command issued you a "Page 11" warning (Page 11). The Page 11 documented your: (a) failure to maintain professional standards (specifically failing the PFT), (b) unacceptable personal appearance, (c) lack of self-discipline, (d) irresponsible attitude, (e) poor judgment, and (f) lack of initiative. You elected not to submit a Page 11 rebuttal statement.

On 14 April 2000, you received NJP for insubordinate conduct. You did not appeal your NJP.

On 12 June 2000, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for the wrongful use of the following four (4) controlled substances: (a) marijuana, (b) methamphetamine, (c) methylenedioxymethamphetamine, aka "Ecstasy," and (d) "LSD." The Court sentenced you to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, confinement for sixty (60) days, and to be discharged from the Marine Corps with a Bad Conduct Discharge (BCD).

Upon completion of your period of confinement, your command placed you on appellate leave to return home and await your BCD. On 26 March 2001, the Convening Authority (CA) approved the SPCM sentence as adjudged. On 11 October 2001, the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) determined that the SPCM findings and sentence were correct in law and fact and that no error materially prejudicial to your substantial rights was committed. Accordingly, the NMCCA affirmed the SPCM findings and sentence as approved by the CA. Upon the completion of SPCM appellate review in your case, on 26 April 2002, you were discharged from the Marine Corps with a BCD 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 contentions that: (a) your SPCM was unjust, (b) the representation assigned to you "did not present my rights nor fight for my behalf," and (c) you wish for a full court-martial case review to justify your rationale for seeing this request. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of your DD Form 149 without any other additional documentation.

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 to deserve an 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 the record reflected that your serious misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

Additionally, the Board determined that no ineffective assistance of counsel (IAC) occurred. The Board noted there is no evidence in the record to support your contention that you did not

receive adequate representation. The Board concluded that you failed to meet the burden to show that: (a) your defense counsel's performance was deficient and fell below an objective standard of reasonableness, and (b) but for the alleged deficiencies, there was a reasonable probability of a more favorable result. In making this finding, the Board noted that you pleaded guilty to the misconduct for which you were convicted.

The Board noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious drug-related misconduct. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. 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.

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 in 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,

7/2/2025

the 1990s, the number of people in the United States who are 65 years of age or older has increased by 50 percent. The number of people 75 years of age or older has increased by 100 percent. The number of people 85 years of age or older has increased by 200 percent. The number of people 95 years of age or older has increased by 400 percent.