



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

██████████
Docket No. 3593-25
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 reconsideration application on 11 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).

You enlisted in the U.S. Marine Corps and began a period of active duty service on 10 September 1997. As part of your enlistment application paperwork, on 20 August 1997, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your enlistment physical examination, on 22 August 1997, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 4 September 2001, you commenced an unauthorized absence (UA) that terminated on 3 October 2001.

On 11 November 2001, pursuant to your guilty pleas, you were convicted at a SPCM for: (a) your 29-day UA, and (b) the wrongful use of a controlled substance (marijuana). 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). The pretrial agreement (PTA) you signed suspended all confinement in excess of forty-five (45) days. During your testimony at your Special Court-Martial (SPCM), you stated under oath that you began your UA shortly after being informed that you tested positive for a controlled substance (marijuana).

On 28 November 2001, you refused a drug dependency screening medical evaluation. On the same day, your command placed you on appellate leave to await your punitive discharge.

On 11 March 2002, the Convening Authority (CA) approved the SPCM sentence as adjudged, except suspended any excess confinement in accordance with the terms of the PTA. On 30 December 2003, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence as approved by the CA. Upon the completion of SPCM appellate review in your case, on 21 April 2004, 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contention that you used marijuana to ease your pain due to a severe accident you had while on active duty. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application; which consisted solely of the written information you provided on your DD Form 149.

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.

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 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 Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also noted that, upon finding out about your positive drug test result, you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse for 29 days.

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 Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

4/15/2025

