



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

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Docket No: 6018-21  
Ref: Signature Date



Dear Petitioner:

This is in reference to your reconsideration request dated 2 September 2021. You previously petitioned the Board for Correction of Naval Records (Board) and were advised that your application had been denied. Your case was reconsidered in accordance with Board procedures that conform to *Lispman v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 25 October 2021. 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.

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 and contentions that you: (1) were the victim of double jeopardy; (2) were not given the opportunity to make up missed drill times while serving in the Marine Corps Reserve; and (3) have paid consequences for your actions both as a military member and as a civilian. Based upon this review, the Board

concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two non-judicial punishments: the first for wrongful possession of marijuana, the second for being incapacitated for duty as a result of prior indulgence of intoxicating beverage and destruction of government property, outweighed these mitigating factors. Additionally, you were sentenced to be confined for three (3) years as a result of your civilian conviction of robbery in the first degree. 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,

10/31/2021

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Executive Director

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