



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: 2302-21
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 21 July 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 your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps on 9 November 1998, after receiving a pre-service drug waiver. On 11 January 2002, you received an administrative remarks (Page 11) 6105 counseling entry after being convicted by civilian authorities of driving under the influence of alcohol. On 4 April 2002, you made a voluntary statement admitting to taking "two hits from the pipe and that was all" while on leave en route to your next duty station. On 28 August 2002, you received nonjudicial punishment for wrongful use of marijuana. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you waived your procedural rights, your CO recommended discharge by reason of misconduct due to

drug abuse with an other than honorable (OTH) character of service. After the staff judge advocate (SJA) determined the separation package was sufficient in law and fact, the discharge authority concurred with the recommendation and directed discharge with an OTH characterization of service by reason of misconduct due to drug abuse. On 25 October 2002, you were discharged with an OTH characterization of service.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention your discharge was “unfair, unjust, and inequitable.” Specifically, the Board considered your contention the command did not prove, by a preponderance of evidence, you wrongfully used marijuana. However, the Board noted your April 2002 admission of using marijuana. Further, the Board, noting the SJA’s determination the package was sufficient in law and fact, presumed regularity in the NJP and the administrative separation process, and concluded the evidence supported, by a preponderance of evidence, your wrongful use of marijuana. Additionally, the Board considered your post-service record of persevering in civilian life by being gainfully employed for 18 years, never failing a drug test, and the absence of a criminal record, but noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Unfortunately, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your reentry code, or changing your narrative reason for separation. The Board, applying liberal consideration, concluded there was insufficient evidence of an error or injustice that warrants granting clemency in the form of an upgraded characterization of service.

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 your contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct outweighed these mitigating factors. 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,

8/16/2021

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Executive Director

Signed by: █