



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: 7190-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request dated 9 November 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 13 December 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: (1) you did not deserve an other than honorable (OTH) characterization of service discharge; (2) you did not alter your identification card as there were discrepancies with the spelling of your last name on your social security card "█" and birth certificate █ which you allege was

known and used to discharge you; (3) you admitted to marijuana use but had recently returned from being deployed to █ where you served your first year in the Marines and were told by enlisted men that smoking marijuana is okay because you were no longer in boot camp; (4) the other marijuana charges you faced were “trumped up” and you were not offered help; (5) your Gunnery Sergeant had a problem with people of color and offered them no guidance; (6) because of this Gunnery Sergeant, many Marines of color were discharged; (7) you joined with intentions of becoming a boxer but were sent overseas; and (8) you are not submitting your petition for monetary compensation, although it would be nice, but primarily to clear your name. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Additionally, the Board noted you did not submit post-service documents to be considered for clemency purposes. 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 four (4) non-judicial punishments: two of which were for the wrongful use of marijuana, 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,

1/14/2022

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Executive Director

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