



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

■  
Docket No: 7321-21  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 23 February 2022. 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).

On 12 June 1996, during your enlistment processing, you were granted a drug waiver and allowed to proceed with enlistment processing. You enlisted in the U.S. Marine Corps and began a period of active duty on 7 January 1997. On 25 July 1997, you received your first nonjudicial punishment (NJP) for violating a written order by drinking alcohol while under the age of 21 and for being in an unauthorized absence (UA) status from watch. On 14 September 1998, you were counseled regarding being eligible but not recommended for promotion due to a pattern of minor infractions to good order and discipline. On 12 Mar 1999, you were issued an Alcohol Treatment Facility (ATF) Certificate for completing 26 hours of an educational based program. On 15 March 1999, you received a second NJP for wrongful use of Tetrahydrocannabinol (THC), the main psychoactive compound in marijuana. You received a third NJP on 25 March 1999, for failing to go to your appointed place of duty.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

On 15 June 1999, a staff judge advocate review determined your proceedings were sufficient in law and fact and on 17 June 1999, the discharge authority directed that: (1) you be discharged with an other than honorable (OTH) characterization of service; (2) your narrative reason for separation be "Misconduct – Drug Abuse;" (3) your separation code be "HKK1;" and (4) your reenlistment code be "RE-4B." You were so discharged on 22 June 1999.

In your application you contend you were discharged after one failed "UA" for THC and not allowed any type of rehabilitation. You add, now that THC is considered legal, you would like your discharged upgraded.

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 contentions noted above. Additionally, the Board noted you did not submit post-service accomplishments or advocacy letters 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 three (3) NJPs and drug use, 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,

3/4/2022

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Executive Director

Signed by: █