



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: 0488-22
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 9 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).

You enlisted in the Marine Corps and began a period of active duty on 29 June 1979. During the period from 31 July 1979 to 4 August 1981, you received three non-judicial punishments (NJP). Your offenses were insubordinate conduct on three separate occasions, four specifications of willfully disobeying a superior commissioned officer, five specifications of failure to go at the time prescribed to your appointed place of duty, and two specifications of failure to obey a lawful command from a superior commissioned officer. On 5 January 1982, you submitted a written request for separation for the good of the service in lieu of trial by court-martial for wrongful possession of 159.5 grams of marijuana. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request was granted, and your

commanding officer was directed to discharge you for the good of the service with an OTH characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of a punitive discharge. You were discharged on 29 January 1982.

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 character of service and change your narrative reason for separation. The Board also considered your contentions that 1) your discharge was too harsh based on your meritorious service and non-violent misconduct; 2) you had a stellar military record, that included a meritorious mast; 3) the misconduct that occurred was minor in nature, not violent, and does not reflect who you were as a hardworking and devoted Marine; 4) your service was otherwise honorable, an other than honorable characterization is too harsh; and 5) you have rehabilitated your life after 28 years of suffering and homelessness.

For purposes of clemency consideration, the Board noted you provided an advocacy letter; however, the Board also noted that you did not provide supporting documentation describing post-service accomplishments for consideration. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and subsequent separation at your request to avoid trial by court-martial, outweighed these mitigating factors. In making these findings, the Board considered the fact you already received a large measure of clemency when your command approved your request to be discharged for the good of the service in lieu of standing trial for your drug related misconduct. Further, the Board determined that your record of misconduct was fairly significant based on your relatively short period of active duty service, regardless of the non-violent nature of your offenses. Therefore, despite the mitigation arguments you raised, the Board concluded that it was insufficient to offset the seriousness and frequency of your military offenses. 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,

2/22/2022

