



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: 1880-22

Ref: Signature Date

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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 28 March 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, 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 28 May 1982. On 27 December 1982, you received nonjudicial punishment (NJP) for wrongfully sitting while posted as a sentinel. On 7 September 1983, you received a second NJP for leaving your port and standing in the lower guard booth leaning outside the window without a cover. On 11 April 1983, you were counseled for an isolated incident involving use and possession of marijuana. You were advised that failure to take corrective action could result in administrative separation. On 20 April 1983, you were counseled for substandard performance. You were advised that failure to take corrective action could result in administrative separation. On 27 July 1983, you were convicted by special court martial (SPCM) for the following offenses: seven instances of unauthorized absence (UA) from appointed place of duty, two instances of disobeying a lawful order, violation of a lawful general order, dereliction of duty, and one instance of wrongful use of a controlled substance-marijuana. You were sentenced to reduction to the rank of E-1, confinement at hard labor, forfeiture of pay, and restrictions. On 3 August 1983, you were

notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. On 5 August 1983, your commanding officer (CO) requested an Administrative Discharge Board (ADB). On 16 August 1983, your SPCM sentence was approved. On 25 August 1983, the ADB voted (3) to (0) that you committed misconduct as a result of drug abuse. Further, the ADB recommended that you were administratively separated from service with an other than honorable (OTH) discharged characterization of service. On 31 August 1983, your CO recommended an OTH discharge characterization of service by reason of misconduct due to drug abuse. On 15 September 1983, your administrative separation proceedings were determined to be sufficient in law and fact. On 23 September 1983, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to drug abuse. On 28 September 1983, you received a third NJP for a period of UA from your appointed place of duty. On 18 October 1983, you were discharged.

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 contention that you tested positive to marijuana use only on one occasion, that you were tested over 12 times for drug use and tested negative, and that you were not afforded the opportunity to have legal counsel during your ADB proceedings. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First, the Board reviewed your ADB record and found evidence you were represented by legal counsel during your proceedings. Second, the Board noted that you were counseled for marijuana possession on 11 April 1983, several months after the time period for which the positive urinalysis occurred. After consideration of these factors, the Board determined that your repeated misconduct, as evidenced by your NJPs and SPCM, outweighed your arguments for mitigation. Specifically, the Board found that your misconduct showed a complete disregard for military authority and regulations. As a result, the Board determined that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization of service. In making this finding, the Board noted you did not submit any documentation or advocacy letters to be considered. 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 the 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,

4/12/2022

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Executive Director
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