



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: 2953-22
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 1 June 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 entered active duty with the Marine Corps on 7 January 1981. On 5 August 1981, you received non-judicial punishment (NJP) for possession of marijuana. On 8 June 1982, civil authorities convicted you of violating the Cannabis Control Law for transferring 6.14 grams of marijuana to another Marine, possessing 7.53 grams of marijuana, possession of 206.91 grams of marijuana, and possession of 11.7 grams of marijuana. You were sentenced to a period of confinement not less than one year and no greater than one year and six months. Subsequently, you were notified of pending administrative separation action by reason of civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to civil conviction with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 18 March 1983, you were so 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 desire to upgrade your discharge, change your reenlistment code, and contentions that you were young and immature, your misconduct was isolated and minor, your performance ratings were good, under current standards, you would not receive an OTH discharge, your punishment was too harsh, and you have been a good citizen. You also argue that you are the beneficiary of the █ trust. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 NJP and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the fact it included multiple drug offenses, and included potential distribution of those drugs. Further, the Board considered the prejudicial nature of your civilian conviction had on the Marine Corps. Finally, the Board noted that the evidence of record did not show that you were not responsible for your conduct, that you should not be held accountable for your actions, or that your conduct was isolated and minor. As a result, the Board concluded that your conduct was a significant departure from that expected from a Marine and warrants an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your reenlistment code, or granting clemency in your case. 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,

6/10/2022

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