



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

■  
Docket No: 3499-22  
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 23 May 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).

During your enlistment processing, you disclosed an offense of possession of stolen goods at the age of 14 for which you were awarded one year probation. You also disclosed using marijuana approximately 13 times prior to submitting your application and twice while in the Delayed Entry Program (DEP). You were granted a moral and cannabis waiver.

You enlisted in the Marine Corps and commenced a period of active duty on 4 September 1985. On 15 May 1987, you were awarded non-judicial punishment (NJP) for wrongful use of marijuana based on a positive urinalysis. You were subsequently processed for administrative separation based on your drug abuse. 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, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD

Form 214), reveals that you were separated from the Marine Corps on 12 June 1987 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct – Drug Abuse," your separation code is "HKK1," and your reenlistment code is "RE-4B."

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 contention that you were exposed to contaminated water at █ but, because of your discharge, you are unable to obtain help via the Department of Veterans Affairs (DVA). You further argue, "[i]n the past you asked me to be held accountable for what I put in my body. Now I ask you to be held accountable for what you did to my body." For purposes of clemency consideration, the Board noted you provided an advocacy letter.

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 drug use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board considered you entered the Marine Corps with a drug waiver and were warned of the consequences of any additional drug use. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating Department of Veterans Affairs benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commended your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In regard to your contention involving contaminated water at █ Public Law 112-154, Honoring America's Veterans and Caring for █ Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the DVA concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

6/17/2022

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Executive Director

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