



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: 4496-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 27 July 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 completed an honorable period of service in the Marine Corps from 29 April 1978 to 4 February 1982. During the aforementioned period, you received non-judicial punishment on four occasions, one summary court martial, and two counseling notices regarding your misconduct. You reenlisted and began a second period of active service on 5 February 1982.

On 20 January 1983, you were a passenger in a vehicle that was searched by military police after the odor marijuana was detected. A suspected marijuana cigarette and drug paraphernalia was observed in the ashtray of the vehicle. On 3 February 1983, you were counseled regarding your pattern of misconduct. Later, you tested positive for marijuana on a urinalysis. As a result, on 11 July 1983, you were notified of the initiation of administrative separation proceedings by reason of drug abuse following a positive urinalysis for the use of a controlled substance, at which point, you elected your right to consult with counsel, and a hearing before an administrative discharge board (ADB). On 13 September 1983, and administrative discharge board convened, and recommended your separation from active duty with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On

28 October 1983, your administrative separation proceedings were determined to be sufficient in law and fact. Subsequently, the separation authority approved and directed your separation from the Marine Corps by reason of misconduct due to drug abuse. On 8 November 1982, 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 characterization of service and contentions that you did not commit a crime, there was no court case, and your service was not dishonorable. 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 positive urinalysis and ADB findings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a drug offense. Further, the Board noted you failed to provide any evidence to support your contentions. The Board found your positive urinalysis for marijuana use to be a violation of the uniform code of military justice (UCMJ) and sufficient evidence to support your OTH characterization of service. As a result, while the Board noted your previous Honorable period of service, they concluded your conduct during your second enlistment constituted a significant departure from that expected of a Marine and continues to warrant 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 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.

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,

8/16/2022

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