



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

█  
Docket No: 4929-22  
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 17 August 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 service on 12 September 2005. On 19 September 2006, you tested positive for the use of a controlled substance by urinalysis. You refused non-judicial punishment (NJP) and were referred to a special court martial (SPCM) for your drug related misconduct. On 18 January 2007, you willingly submitted to a polygraph that indicated you showed deception when denying knowing use of drugs. On 7 February 2007, you were recommended for administrative separation processing in lieu of trial by court-martial. You were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point you elected your right to consult with counsel, and a hearing of your case before an administrative discharge board (ADB). On 7 February 2007, your commanding officer recommended your separation from the Marine Corps with an Other Than Honorable (OTH) character of service. You submitted a refusal for substance abuse treatment on 15 February 2007. On 23 February 2007, an ADB convened and unanimously voted for your separation from the Marine Corps with an OTH character of service by reason of

misconduct drug abuse. On 12 April 2007, the separation authority approved and directed your discharge as recommended by the ADB. On 18 April 2007, 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 your discharge was inequitable because it was based on an isolated incident in 20 months of service with no adverse action. 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, polygraph findings, and ADB findings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a Marine is contrary to Marine Corps policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concluded that there are circumstances in which conduct reflected by a single incident may provide the basis of characterization of service. 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. 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,

9/8/2022

█  
Executive Director  
█