



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: 5377-22

Ref: Signature date



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 3 October 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 15 January 1995. On 14 April 1997, you signed a special court martial pretrial agreement to plead guilty to the following charges: larceny, oral sodomy, and failure to report an offense. Subsequently, all charges were referred for summary court martial (SCM). On 24 April 1997, you were convicted of larceny of military property and failure to report an observed offense. You were sentenced to reduction to the rank of E-1, confinement and forfeiture of pay. On 16 May 1997, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. As a result, on 9 June 1997, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you elected to waive your procedural rights. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 19 June 1997, the separation authority approved an OTH discharge characterization by reason of misconduct due to drug abuse. On 27 June 1997, 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 desire for a discharge upgrade and contentions that you were put in a situation which it was hard to prove your innocence, you were young and made mistakes, and that you were put through so much pressure and decided to use marijuana. 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. In addition, the Board noted your drug offense. The Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and 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. 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 commends your post-discharge accomplishments, 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 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,

10/18/2022

