



**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: 5466-22  
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 28 September 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty on 29 September 1983. On 6 November 1984, you received non-judicial punishment (NJP) for failure to be at an appointed place of duty and falsely altering a government issued operator's permit. Then, on 25 May 1986, you received a second NJP for wrongful use of a controlled substance and larceny of property belonging to another Marine. On 16 September 1986, you received a third NJP for possession of stolen property and violation of a written order. Subsequently you were notified for administrative separation for misconduct, due to minor disciplinary infractions. You waived your rights to consult with military counsel and to request an administrative board hearing. Your

commanding officer (CO) recommended to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization of service. While awaiting separation, you received your fourth NJP for disobeying a lawful order and failure to go to appointed place of duty. After your discharge underwent a legal review, the SA approved the CO's recommendation on 4 November 1986. Subsequently, you were discharged on 14 November 1986 with an OTH.

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 your conduct was influenced by personal circumstances including your marriage status, medical issues, and your children requiring support. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters. The Board noted your marriage certificate and birth certificates of your children.

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 four NJPs, 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 core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. Further, while the Board considered your contentions regarding your family circumstances, they were unable to draw a nexus between your need to support your family and drug abuse, larceny, or falsifying a government permit. 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,

10/2/2022

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Executive Director

Signed by: █