

DEPARTMENT OF THE NAVY

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

> Docket No: 6652-22 Ref: Signature Date



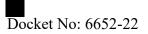
Dear Petitioner:

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 Marine Corps and began a period of active duty on 13 June 2005. On 9 March 2006, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 48 days. On 21 March 2006, you received your second NJP for wrongful use of marijuana. On 13 April 2006, you were convicted by a summary court-martial (SCM) of two specifications of UA. On 20 April 2006, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense. You were advised of your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB) but waived them. Your commanding officer (CO) then forwarded your administrative separation package to the



separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps. On 4 May 2006, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

On 23 January 2007, the Marine Corps, Legal Services Support Section, Staff Judge Advocate reviewed your SCM conviction and determined that the SCM was in error, in that "the courtmartial did not have jurisdiction over the accused pursuant to the Rule for Courts-Martial 201(b)."

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 change your reenlistment code and contention that the record is in error because an Army 1st LT conducted your court-martial. The Board also considered your assertions that you desire to reenlist, complete the job you first set out to do, and correct your mistakes as you have learned a hard lesson the hard way. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. Notwithstanding the SCM, in making this finding, the Board considered the seriousness of your misconduct, the fact it involved a long-term UA and 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. 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. Ultimately, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an RE-4 reenlistment code. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your reenlistment code or granting elemency in the form of a different reenlistment code that allows reenlistment. Accordingly, given the totality of the circumstances, the Board determined 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

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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,	
Executive Director	
Signed by:	