



**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: 7426-22  
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 22 December 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 entered active duty with the Marine Corps on 2 October 1978. During the period from 5 March 1979 to 24 January 1980, you received two non-judicial punishments (NJP) for possession of marijuana and unauthorized absence (UA) for 32 days. On 15 May 1980, you were relieved from duty due to unsatisfactory performance of duties and unsatisfactory conduct. On 3 December 1980, you received a warning counseling (Page 11) on failing to obey orders. On 30 January 1981, you received a Page 11 on your conduct, attitude, and demeanor when dealing with commissioned officers. On 5 February 1981, you received NJP for interfering with a military policeman in the performance of his duties, assault on a military policemen, and drunk and disorderly conduct.

On 21 April 1981, you received a Page 11 regarding your attitude and verbal responses to non-commissioned officers (NCO) and officers. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to frequent involvement with military authorities and recommended you be separated with an Other Than Honorable (OTH) characterization of service. The separation authority (SA) concurred with the ADB and directed an OTH discharge by reason of misconduct. On 6 November 1981, 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 discharge and contention that you received an Honorable discharge from the Army after serving in the Gulf War. For the purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters other than your Army discharge document.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and Page 11s, 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. 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. In addition, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. Finally, the Board commends you for your service in the Army; however, it does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge. 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 of service. While the Board considered your Honorable service with the Army, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

1/14/2023

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Executive Director

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