



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

■  
Docket No: 7501-22  
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 7 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 enlisted in the Marine Corps and began a period of active duty on 4 May 1992. On 21 July 1993, you received non-judicial punishment (NJP) for assault and conducting yourself in an unbecoming manner while on liberty. On 3 March 1995, you received your second NJP for disrespect toward a commissioned officer, breach of peace, assault, and drunk and disorderly conduct. Additionally, on 3 March 1995, you were issued an administrative remarks counseling concerning deficiencies in your performance and conduct; specifically, improper conduct while on liberty and arrest for driving while under the influence of alcohol on 15 January 1995. On

1 May 1996, you were convicted by a special court-martial (SPCM) of wrongful possession of marijuana, wrongfully introduce marijuana onto a military installation, and wrongful distribution of marijuana. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 18 August 1997, 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 change your discharge character of service and contentions that it is an injustice for you to continue to suffer the adverse consequences of a BCD, the punishment of a BCD is too severe compared with today's standards, clemency is warranted after 25 years, you were one day from terminal leave prior to getting into trouble, your average conduct and efficiency ratings/behavior and proficiency marks were commonly above average, and your record of promotions showed you was generally a "locked on Marine." For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, which involved a drug offense, and concluded that it showed a complete disregard of military authority and regulations. The Board determined that illegal drug use or possession of illegal substances by a Marine is contrary to Marine 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 or possession of marijuana is still against Department of Defense regulations and not permitted while serving in the military. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. Finally, the Board was not persuaded by your arguments for clemency and mitigation after noting that, post-discharge, you were confined in civilian custody for approximately 20 years for continued misconduct. Therefore, 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,

12/30/2022

