



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

█  
Docket No. 8638-22  
Ref: Signature Date

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Dear █

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 November 2022. The names and votes of the members of the panel 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 this 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).

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 20 November 1996. On 25 November 1997, you received nonjudicial punishment for disrespect to a noncommissioned officer and also for disobeying an order by having a bottle of gin in his room. On 5 December 1997, you received a written counseling concerning your disrespect to a noncommissioned officer. On 4 March 1999, you received a written counseling noting that you were not recommended for promotion due to your height and weight. On 16 June 1999, you received another counseling noting that you were not recommended for promotion due to your height and weight, and that you been found to have engaged in illegal drug use. On 22 June 1999, you received nonjudicial punishment for wrongful use of marijuana.

On 23 June 1999, you were notified of the initiation of administrative separation proceedings and your rights in connection therewith. You waived your right to an administrative board. On 5 August 1999, your commanding officer recommended that you be discharged with an Other Than Honorable (OTH) characterization of service. On 5 October 1999, you were so discharged.

Post-discharge, you filed an application with the Naval Discharge Review Board (NDRB) seeking to have your discharge characterization upgraded. On 13 June 2008, the NDRB denied your application.

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 disability benefits. In support of your request, you contend that while you were in boot camp you injured your left ankle and had surgery, and that you were nevertheless able to finish basic training and were an honor graduate. You explained that you are now experiencing complications from the pins that were placed in your ankle and that, in order to have this problem treated by the U.S. Department of Veterans' Affairs, you need to have your discharge upgraded. Your petition did not provide any supporting documentation.

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, 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 service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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.

While the Board noted that you marked "disability" on your DD Form 149, your written request only referenced a characterization upgrade. Regardless, for the sake of completeness, the Board considered whether your record should be changed to reflect a disability discharge or retirement. Ultimately, the Board determined no change was supported by the evidence since you were not eligible for disability processing at the time of your discharge for misconduct. 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,

1/3/2023

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Executive Director

Signed by: █