



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. 9347-22
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 15 February 2023. 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).

You enlisted in the U.S. Marine Corps and began a period of active duty on 16 December 1970. On 14 December 1972, there was a complaint for arrest issued in the county of Onslow, North Carolina for your possession of 500 grams of marijuana. You were convicted, on 25 January 1973, and sentenced to six months in jail, which was suspended for one year and a fine of \$200.00. As a result, you were processed for administrative separation, notified for separation based on your civilian conviction, and you elected an administrative board. At your administrative board, you made an unsworn statement that your desire to stay in the Marine Corps was very low, you did not have the attitude and desire to be a Marine, you continued to smoke marijuana, and that you did not intend to stop smoking marijuana at that time. You ended your statement by saying if you were retained, you didn't see how you could possible keep out of trouble. The administrative board recommended you be discharged with an undesirable discharge (Other Than Honorable (OTH)) which was forwarded to the Separation Authority (SA). The SA

accepted the recommendation and directed you be discharged. You were so discharged on 1 June 1973.

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 it was unfair and unjust punishment, you never disobeyed an order and served honorably, and you answered truthfully when asked if you would continue this behavior. You went on to contend that it was your first offense for any misbehavior and was never offered any rehabilitation. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian conviction outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely discrediting effect your civilian conviction had on the Marine Corps. Finally, the Board disagreed with your contention that you never disobeyed any orders and served honorably. The Board noted that you abused marijuana and stated your unwillingness to stop using the controlled substance despite the existence of federal law and Marine Corps regulations against its use. 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 granting you the relief you requested or granting relief 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,

2/22/2023

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Executive Director

Signed by: █