



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

█  
Docket No. 0056-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 January 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 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, 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 United States Marine Corps and commenced a period of active duty on 8 December 2003. On 3 May 2004, you were formally counseled for underage drinking while on liberty. On 19 October 2004, you were formally counseled related to a positive urinalysis for marijuana on 12 August 2004. On 27 January 2005, you were found guilty at Special Court Martial (SPCM) for violating Uniform Code of Military Justice Article 112(a), three specification of wrongful possession and use of marijuana. You were sentenced to a Bad Conduct Discharge (BCD), 45 days confinement, reduction in rank to E-1, and forfeitures of pay. The appellate review on your case was complete on 9 November 2005 and the sentence was ordered executed. On 22 August 2006, you were discharged from the Marine Corps with a BCD as a result of the SPCM and assigned a RE-4 reenlistment code.

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: (1) your desire to change your discharge characterization, (2) your contention that you were not given the opportunity to correct your mistake and feel like you were treated harshly, and (3) your assertion that you were a great Marine who was assigned to cover the duties of two Marines. For purposes of clemency and equity consideration, the Board noted that you provided an advocacy letter in support of your request for relief.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your positive drug test, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. The Board was not swayed by your assertion that you were treated harshly, because your drug use was not an isolated event and you were afforded all of your procedural rights throughout the disciplinary process. The Board determined that a BCD is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member.

The Board 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. Lastly, 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 that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of a BCD. While the Board commends your post-discharge good character, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your 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,

2/3/2023	
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Executive Director	
Signed by: █	