



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. 336-23
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 25 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 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 U.S. Marine Corps and began a period of active duty on 10 March 1980. On 23 June 1981, you were issued a counseling warning for your unsatisfactory performance of duty while standing equipment watch onboard █. You received non-judicial punishment (NJP), on 10 Jun 1982, for failure to obey a lawful verbal order. You were then issued a second counseling warning, on 24 March 1983, for your performance and conduct for your pattern of involvement of illegal drug use or possession and you were assigned to Unit Level Education Program.

You received your second NJP on 29 March 1983, for wrongful use of marijuana. On 4 May 1983, you were issued your third counseling warning for your performance and conduct. In the counseling warning, it stated you were being retained in the naval service but the following deficiencies in your performance or conduct; being involved in an incident of illegal drug use or possession. You elected to submit a statement to be included in your OMPF.

On 20 July 1983, you were issued your fourth counseling warning for your poor leadership and dependability. On 27 October 1983, you received your third NJP for wrongful use of marijuana. The Commanding Officer (CO) assigned an informal inquiry on your misconduct and on 25 November 1983, the inquiry officer determined, despite repeated drug abuse counseling's and formal classes, you still desired to continue your involvement in drug abuse. As a result, you were recommend immediate discharge for the Marine Corps with an Other Than Honorable (OTH) discharge.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 9 January 1984 with an OTH characterization of service, your narrative reason for separation is "Misconduct – Drug Abuse," your separation code is "HKK1," and your reenlistment code is "RE-3B." Your separation code indicates you were separated for drug abuse.

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 an upgrade in your characterization of service and contentions that your OTH was solely based on marijuana use during an otherwise Honorable and excellent period of service and that marijuana crimes have been pardoned by the President of the United States. 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 three 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 concluded that your 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 separation with an OTH. Finally, contrary to your contention, the Board noted that your active duty service was marred by three NJPS and multiple counselings for poor performance. As a result, the Board concluded your conduct constituted a significant

departure from that expected of a Marine and continues to warrant an OTH. 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,

2/2/2023

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Executive Director

Signed by: █