



**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. 0512-23  
1687-19  
Ref: Signature Date

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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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. 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).

You previously submitted a request to this Board and were denied relief on 11 March 2020.

You enlisted in the Marine Corps and began a period of active service on 11 July 1994. On 24 August 1996, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 112(a), for the wrongful use of a controlled substance (marijuana). You underwent a substance abuse evaluation, on 9 September 1996, and the counselor's diagnostic impression was "Drug Abuse," which was confirmed by a medical officer's diagnosis. You were recommended for administrative separation processing and, on 21 October 1996, you waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Your commanding officer recommended that you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct-drug abuse. On 18 November 1996, the Staff Judge Advocate reviewed the administrative separation proceedings and determined your case to be sufficient in

law and fact. On 26 November 1996, you were discharged from the service with an OTH characterization of service by reason of misconduct.

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 and your narrative reason for separation, (2) your assertion that you experienced racial discrimination from your superior, (3) the impact that this discrimination had on your misconduct, and (4) your argument that marijuana is now legal in many states and therefore the severity of the misconduct is less today than at the time of the misconduct. For purposes of clemency and equity consideration, the Board noted that you provided character letters, documentation of post-service accomplishments, Department of Veterans Affairs (VA) documents, and articles on racism in the military.

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 urinalysis and subsequent NJP, 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 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. Therefore, the Board was not swayed by your argument that because marijuana is now legal in some states, that the misconduct is therefore less severe. The Board noted that during the administrative separation process, you did not raise any claims of harassment or racial discrimination. The Board also noted that you did not raise these issues even as recently as during your prior Board petition, which you submitted in 2019. 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. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments and 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,

2/6/2023

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Executive Director

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