



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

█
Docket No. 0677-23

Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 8 May 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active duty on 9 December 1982. On 1 July 1983, you received nonjudicial punishment (NJP) for operating a vehicle while under the influence of alcohol. On 7 July 1983, you were counseled concerning your appearance, lack of respect towards superiors, lack of discipline, and your inability to perform everyday task assigned to you. You were advised that failure to take corrective action could result in administrative separation.

On 3 August 1983, you received a second NJP for use of a controlled substance-marijuana and destruction of government property. On 11 August 1983, you failed to complete phase I of drug and rehabilitation classes due to unauthorized absence (UA) from class. On the same date, your commanding officer (CO) recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse.

On 26 August 1983, you were apprehended by military authorities for disobedience of a lawful order and driving while under revocation of base privileges. On 9 September 1983, you received a third NJP for disobeying a lawful order. On 15 November 1983, you were again apprehended by military authorities for driving under revocation of base driving privileges.

On 9 December 1983, you began a period of UA which lasted one-day. On 20 December 1983, you were convicted by summary court martial (SCM) for two periods of UA, and for wrongfully attempting to falsify a random urinalysis by possessing a bottle hidden in your trousers. You were sentenced to reduction to the inferior grade of E-1, confinement at hard labor for 30 days, and forfeiture of pay in the amount of \$382.00 for one month.

On 20 January 1984, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. On 16 February 1984, your CO recommended an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 8 March 1984, your administrative separation proceedings were determined to be sufficient in law and fact. On 9 March 1984, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 28 March 1984, you were so discharged.

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 you do not deserve your OTH discharge and requests to know why you were assigned an OTH. 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 NJPs and SCM, 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 impact your pattern of misconduct had on the good order and discipline of your unit. In reviewing your record of misconduct, the Board noted that your conduct showed a complete disregard for military authority and regulations. You were given multiple chances to change your behavior but continued to commit misconduct, this ultimately led to your administrative separation and assignment of an OTH

characterization of service. As a result of your extensive record of misconduct, 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 the 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,

5/22/2023

