



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

█  
Docket No. 846-23  
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 5 April 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. Navy and began a period of active duty on 23 January 1978. You received non-judicial punishment (NJP), on 28 July 1978, for possession of marijuana. You then received your second NJP, on 1 March 1979, for three specifications of unauthorized absence (UA) and missing ship's movement. On 5 July 1979, you received your third NJP for two specifications of possession of marijuana. You were screened for drug dependency and found not dependent, but rehabilitation was recommended. You subsequently completed the rehabilitation on 10 October 1979 before going UA. On 25 March 1980, you were found guilty at special court-martial (SPCM) for two specifications of UA totaling 99 days.

On 14 December 1980, you received your fourth NJP for failure to obey a lawful order. You were subsequently issued a counseling warning regarding your misconduct. You were warned that further misconduct may result in disciplinary action and also administrative discharge.

In February 1981, you were apprehended by Naval Investigative Service (NIS) for selling marijuana to an informant. As a result, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged for continuous involvement with military and civil authorities and be assigned an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged. On 1 May 1981, you then received your fifth NJP for failure to go to your appointed place of duty, one hour UA, possessing marijuana, wrongfully transferring marijuana, and wrongfully selling marijuana. You were so discharged on 21 May 1981.

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 contention that a NIS agent pressured you to buy drugs for him. 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 five NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included numerous drug offenses. 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, the Board also 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. 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, \_\_\_\_\_

4/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]