



**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. 1458-23

Ref: Signature Date

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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 13 March 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).

You enlisted in the Marine Corps and began a period of active duty on 31 August 1981. On 24 June 1982, you were counseled for poor performance and attitude. On 22 June 1982, you began a period of unauthorized absence (UA) which lasted 16 hours, 30 minutes, and resulted in nonjudicial punishment (NJP) on 25 July 1982. On 25 August 1982, you were counseled for your continuous poor performance and tardiness. On 20 September 1982, you began a second period of UA which lasted eight-days. On 29 September 1982, you were counseled for frequent periods of UA, poor performance, and negative attitude. On 30 September 1982, you began a third period of UA which lasted six-days and resulted in NJP on 5 October 1982. On 13 October 1982, you were counseled for continuous poor performance and negative attitude. On 18 October 1982, you were counseled for your previous NJPs. You were advised that failure to improve performance or further UCMJ violations may result in administrative separation. On 4 November 1982, you were convicted by summary court martial (SCM) for a five day period of UA. You were sentenced to reduction to the inferior grade of E-1, confinement at hard labor and forfeiture of pay. On

7 February 1983, you were counseled for UCMJ violations leading to NJPs and SCM. You were advised that failure to take corrective action could result in administrative separation. On 11 March 1983, you received a third NJP for wrongful use of a controlled substance-marijuana.

Unfortunately, some 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 19 May 1983 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct – Pattern of Misconduct," your separation code is "HKA1," and your reenlistment code is "RE-4."

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: (a) you were incorrectly discharged from service; (b) your father was very ill and hospitalized; and (c) you command denied your request to go home. For purposes of clemency and equity consideration, the Board noted you submitted two character letters of support.

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 was not persuaded by your contentions and considered the fact you were counselled on multiple occasions regarding your misconduct. Despite the numerous attempts by the Marine Corps to rehabilitate your conduct, you continued to commit misconduct that included a drug offense. 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, 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 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, \_\_\_\_\_

4/4/2023

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Executive Director

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