



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. 3243-23

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 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.

On 22 July 1987, you enlisted in the Marine Corps (USMC) and signed a statement of understanding concerning the USMC on illegal use of drugs. On 18 July 1988, you began a period of active duty service. On 12 March 1990, you were counseled concerning an incident of illegal drug involvement, specifically, a positive urine sample for marijuana. Subsequently you were referred to Level II drug treatment and advised that failure to take corrective action could result in administrative separation. On 20 March 1990, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. On 27 June 1990, you were assigned

to a 12-month command monitored aftercare program due to your successful completion of Level II treatment.

On 2 July 1991, you were counseled for failure to pay your debts on time and for wearing an unauthorized PT uniform for squadron PFT. You were advised that failure to take corrective action could result in administrative separation. On 20 July 1992, you were counseled concerning a second incident of illegal drug involvement, specifically, a positive urine sample for marijuana. On 29 October 1992, you were convicted by special court martial (SPCM) for wrongful use of a controlled substance-marijuana. You were sentenced to reduction to the inferior grade of E-1, confinement for a period of 30 days, and forfeiture of pay in the amount of \$580.00 for a period of one month.

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 3 March 1993 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct – Drug Abuse (administrative discharge board required but waived)" your separation code is "HKK1," and your reenlistment code is "RE-4B."

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 young and irresponsible at the time you served; and (b) you are a model citizen, stayed employed for over 29 years, and became a business owner. 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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple 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 considered the likely negative impact your misconduct had on the good order and discipline of your unit. Finally, while the Board considered your assertions of good post-discharge conduct, they noted you provided no evidence to substantiate your assertions. 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 liberally and 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,

5/30/2023

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Executive Director

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