



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. 3445-23

Ref: Signature Date

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Dear █

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 22 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).

You enlisted in the Marine Corps on 15 October 2002 with a waiver for pre-service marijuana use, weight retention standards, and a pre-service assault charge. You also acknowledged and signed a statement concerning the use of illegal drugs while serving in the military. On 5 May 2003, you began a period of active duty.

On 25 October 2004, you were convicted by summary court martial (SCM) for wrongful use of two controlled substances, cocaine and THC, in addition to disobeying a lawful order. You were sentenced to reduction to the inferior grade of E-1, forfeiture of pay in the amount of \$795.00 for one month, and confinement for 30 days.

On 14 March 2005, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. On 16 March 2005, you decided to waive your procedural rights. On 30 March 2005, your commanding officer recommended an Other Than

Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 7 April 2005, you received nonjudicial punishment (NJP) for unauthorized absence from appointed place of duty. On 18 May 2005, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to drug abuse. On 3 June 2005, you were 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: (a) you are currently suffering from COPD related to the Gulf War presumptive airborne hazards, (b) you were a carpenter until your lungs and knees issues caused you to lose your job, and (c) you are unable to function most of the time as a result of your medical issues. For purposes of clemency and equity consideration, the Board noted you did provide supporting documentation describing your current health issues.

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 SCM, 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 effect your conduct had on the good order and discipline of your unit. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 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,

6/7/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]