



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

█  
Docket No. 3932-23  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 November 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 this 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).

After two previous periods of Honorable service, you immediately reenlisted in the Marine Corps and commenced another period of active duty on 16 January 1981. On 30 July 1982, you signed acknowledgment of having been briefed on the Marine Corps Policy on Illegal Drugs & Alcohol in the Administrative Remarks section of your service record. On 10 January 1983, you were admitted at the hospital after awakening with a blurry, painful, right eye. You were thereafter diagnosed with closed angle glaucoma. On 28 March 1983, you were taken to Summary Court-Martial (SCM) for a violation of Article 134, use of marijuana. On 26 April 1983, you were convicted at Special Court-Martial (SPCM) of Article 131, perjury, and two specifications of Article 134, use of marijuana. As part of your SPCM sentence, you were awarded a Bad Conduct Discharge (BCD) and discharged on 28 October 1983. After completion of all levels of review, the BCD was ordered executed on 26 April 1984.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB). On 26 October 1984, the NDRB denied your request, determining your discharge was proper as issued.

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 to change your discharge character of service. You contend: (1) your discharge should be upgraded due to President Biden's October 26, 2022, Statement on Marijuana Reform, (2) on 10 January 83, you awoke with excruciating eye pain and could not see out of your right eye, (3) both a Navy and civilian ophthalmologist told you if you wanted to see you should smoke marijuana, and (4) you were confined at █ Correctional Facility for three months and, while there, contracted hepatitis, was quarantined for two weeks in a cell, and was exposed to water contamination. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, President Biden's October 26, 2022, Statement on Marijuana Reform, and a Notice of Representation from your counsel.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found your conduct showed a complete disregard for military authority and regulations. 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. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Finally, the Board noted you were given an opportunity to continue your service after your SCM, but continued to commit misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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 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. New matters of use to the Board in your case may include medical documentation of your current eye health, and/or information from licensed medical doctors, or other reliable sources, explaining glaucoma treatment options, and/or occasions of resistance to traditional treatment options. In submitting a new DD Form 149, it is important to keep in mind 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,

11/19/2023

[REDACTED]