



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

█  
Docket No. 4913-23  
Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 September 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps with a pre-service history of marijuana use and began a period of active duty on 1 December 1980. The following year, on 10 December 1981, you accepted nonjudicial punishment (NJP) for three specifications of violating Article 92 of the Uniform Code of Military Justice (UCMJ) due to knowingly failing to obey a Company order by having wine and liquor in the barracks, knowingly failing to obey a Company order by having alcoholic beverages in the barracks, and, knowingly disobeying a lawful order from a Sergeant to clean up your area by, instead, leaving. However, you served for the next year and a half without incident and received a personal award for outstanding performance from 27 September 1982 through 10 October 1982.

On 9 June 1983, you made a statement admitting that you had used marijuana on 4 June 1983. This resulted in a second NJP for a violation of Article 134 by knowingly and wrongfully using the controlled substance, marijuana. You continued serving until the results of your drug dependency screening, on 14 September 1983, reported that you were physically and psychologically dependent on alcohol. You then received a third NJP, on 5 October 1983, for a violation of Article 86 due to failure to go at the time prescribed to your appointed place of duty. As a result, you were notified of separation proceedings for the reason of misconduct due to drug abuse, and you requested representation at a hearing before an administrative board.

Your administrative separation hearing was held on 19 December 1983, wherein the members found the basis for separation met by a preponderance of the evidence and recommended your discharge under Other Than Honorable (OTH) conditions for misconduct due to drug abuse. Commanding General, ██████████, approved the findings and recommendations of the administrative board, and you were discharged on 19 January 1984.

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 upgrade your discharge and to change your narrative reason for separation, separation code, and separation authority. You contend that maintaining an OTH discharge no longer serves any articulable purpose given that your discharge was, as you assert, based upon an isolated use of marijuana. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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, 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. Further, although the Board observed that the basis for your separation was drug abuse, your characterization also accounted for two other NJPs, one of which involved multiple orders violations. 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 and commends your post-discharge accomplishments, 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 is attached 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,

10/16/2023

[REDACTED]