

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 4957-23 Ref: Signature Date



## Dear Petitioner:

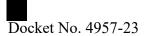
This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 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 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 commenced active duty on 19 September 1978.

On 12 November 1979, you received non-judicial punishment (NJP) for being absent from your place of duty. On 19 December 1979, you received NJP for willful destruction of government property and two specifications of failure to report to your place of duty. On 28 February 1980, you received NJP for possession of marijuana. On 28 April 1980, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. On 14 May 1980, you received NJP for disobeying a lawful order. On 20 November, 1980, you received NJP for failure to report to your appointed place of duty. On 7 May 1981, a Summary Court-Martial (SCM) found you guilty of willfully disobeying a lawful order. On 22 June 1981, you received NJP for being absent from your place of duty.

On 1 July 1981, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to frequent involvement with



military authorities. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB).

On 13 July 1981, you received NJP for disobeying a lawful order.

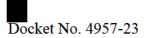
On 29 September 1981, the ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. The separation authority concurred with the ADB and directed an OTH discharge by reason of misconduct. On 8 December 1981, you were so 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 to upgrade your discharge and your contentions that you have lived the last forty years in the best behavior you can with no criminal record, your health is not good, and you believe you should have your discharge upgraded. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your 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, the relative brevity of your service during which you committed these multiple offenses, the nature of your misconduct, and the fact it involved 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits.

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 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.

