



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

■  
Docket No. 6420-23  
Ref: Signature Date

[REDACTED]  
[REDACTED]  
[REDACTED]

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 11 October 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).

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

You enlisted in the Marine Corps and began a period of active duty on 21 November 1989. On 7 February 1991, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty, drunk and disorderly conduct, and assault.

On 10 December 1991, you were presented to a medical board and subsequently evaluated and diagnosed with episodic loss of consciousness and alcohol abuse and dependence. The medical board opined that you were not fit to return to full duty status, and recommended that you return to your unit and be placed on a limited duty status.

During the period from 10 January 1992 to 2 February 1992, you were assessed at a Naval Hospital and diagnosed with alcohol dependence in partial remission, passive aggressive and antisocial features. On 18 February 1992, in accordance with naval regulation you were placed in the Aftercare Program for a period of 12 months. On 24 February 1992, the Navy Drug Laboratory reported that your urine sample tested positive for THC (marijuana). On 30 April 1992, you were convicted by a special court-martial (SPCM) of wrongful use of marijuana. On 26 June 1992, you were released from the Aftercare group due to your poor participation.

On 4 November 1992, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You elected your procedural right to consult with military counsel. After consulting with military counsel, you waived your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge; however, directed the CO to discharge you with a General (Under Honorable Conditions) (GEN) characterization of service by reason of misconduct due to drug abuse. Prior to your administrative discharge, in January 1993, you received a second NJP for two specifications of UA, totaling 19 days.

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 and contention that your discharge should be upgraded "due to time served" after your discharge. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness 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. Additionally, 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 conduct had on the good order and discipline of your unit. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, regarding your contention, the Board found no evidence to substantiate your allegation that you were retained on active duty in a restricted status for nine months after your discharge was approved. Ultimately, the Board determined you were fortunate to receive a GEN characterization of service based on your record of misconduct. As a result, the Board determined significant negative aspects of your active duty service outweighed the positive and

continues to warrant a GEN 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 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.

Sincerely,

10/26/2023

