



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

■  
Docket No. 6760-23

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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. 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 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).

You enlisted in the United States Marine Corps and commenced a period of active duty on 10 January 2005. On your enlistment application you acknowledged pre-service marijuana use. On 20 April 2005, you admitted to being a "drug addict." Although your urinalysis was negative, on 27 April 2005, you were found guilty at non-judicial punishment (NJP) for violating UCMJ Article 112(a), for wrongful use of a controlled substance; to wit, admitted use of marijuana. You did not appeal this NJP. On 29 April 2005, you refused substance abuse treatment.

On 12 May 2005, you were notified that you were being processed for an administrative discharge by reason of misconduct due to admitted drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. When questioned by your commanding officer, you stated that you violated the drug policy because you did not want to stay in the Marine Corps. On 3 June 2005, you were discharged from the Marine

Corps for misconduct due to your admission of drug abuse and assigned an Other Than Honorable (OTH) characterization of service and an RE- 4 reentry code.

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: (1) your desire to change your discharge characterization, narrative reason for separation, and reentry code, (2) your contention that your separation was unjust because it was solely based on your admission of drug use rather than a positive urinalysis, and (3) your desire to qualify for veterans' benefits, reenlist, and continue to gain skills in the field of information technology. For purposes of clemency and equity consideration, the Board noted that you provided an advocacy letter and documentation regarding your post-service accomplishments.

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved admitted drug abuse. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade or change to your narrative reason for separation. The Board concluded that your admission of drug abuse is a sufficient basis for separation, regardless of the presence of a positive urinalysis.

Lastly, 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. While the board commends your post-service accomplishments, it determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct clearly merited your receipt of an OTH. Therefore, 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. 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,

9/26/2023

