



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

█
Docket No. 6774-23

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 1 March 1988. On your enlistment application, you acknowledged pre-service marijuana use and were accepted into the service on an alcohol abuse waiver due to an underage drinking charge. On 24 May 1990, you were found guilty at Non-judicial Punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a lawful order. On 2 August 1991, you received your second NJP for violating UCMJ Article 91, for disrespectful language, and Article 92, for failure to obey an order. On 23 October 1991, you received your third NJP for violating UCMJ Article 112(a), for conspiring to wrongfully introduce seven tabs of LSD onto a military installation through the US mail. You did not appeal these NJPs.

On 11 December 1991, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On

27 December 1991, you were discharged from the Marine Corps for misconduct due to your drug abuse and assigned an Other Than Honorable (OTH) characterization of service and an RE- 4 reentry code.

Post-discharge, you submitted an application to the Naval Discharge Review Board (NDRB) and were denied relief on 5 January 1992. You also submitted a petition for relief to this Board and were denied relief on 24 February 2009.

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 and narrative reason for separation, (2) your assertion that the mistakes you made in the military in no way reflect who you are as a person, and (3) the fact that it has been over 30 years from the date of your discharge. For purposes of clemency and equity consideration, the Board noted that you provided 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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that conspiring to obtain illegal drugs 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 commends your post-service accomplishments, however, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct clearly merited your receipt of an OTH. 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,

9/27/2023

