

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

> Docket No. 7081-23 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 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 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 Marine Corps and commenced a period of active duty on 7 June 2005. You were counseled in July 2006 and December 2006 regarding your disrespectful language, unauthorized absence (UA), and making a false statement. On 15 March 2007, you were counseled on your illegal drug involvement, following a positive urinalysis for marijuana. On 6 April 2007, you were convicted at a summary court martial (SCM) for wrongful use of marijuana and counseled regarding your misconduct. You refused treatment for substance abuse on 31 October 2007. On 5 November 2007, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to drug abuse. Subsequently, you waived your right to consult with counsel, and a hearing before an administrative discharge board. On the same day, your commanding officer recommended your separation from active service with an Other Than Honorable (OTH) characterization by reason of misconduct due to drug abuse. The separation authority approved the recommendation and directed your discharge. On 12 December 2007, 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 characterization and contentions that you unknowingly consumed marijuana prior to a deployment and you are currently employed with the Department of Veterans Affairs but unable to receive veterans' benefits. The Board noted you checked the "PTSD" box on application but chose not to provide no evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments and an advocacy letter.

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, 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 was not persuaded by your argument of innocent ingestion and noted you provided no evidence to substantiate your contention of a wrongful conviction. Finally, 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. 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 you for your postdischarge 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 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,