



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

█  
Docket No. 7658-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 27 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 to 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 began a period of active duty on 3 May 1982. Within your first seven months of service, you were subject to nonjudicial punishment (NJP), on 12 November 1982, for a violation of the Uniform Code of Military Justice under Article 92 due to failure to obey a lawful order which prohibited consuming beer in a government building. You subsequently absented yourself without authority from 4 May 1983 until 12 May 1983; however, this absence was later excused without disciplinary action or lost time. On 22 December 1983, you were administratively counseled for an offense of driving under the influence and cautioned that further misconduct could result in judicial proceedings or administrative separation. Fewer than three months later, on 8 March 1984, you were notified of processing for administrative discharge by reason of misconduct due to drug abuse. Although you were notified of your rights incident to these proceedings, you elected to waive your right to

a hearing before an administrative board without consulting legal counsel. On 7 March 1984, you received a second NJP due to an offense under Article 134 for wrongful use of marijuana. Subsequently, the recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded. Commanding General, ██████████, ██████████, approved the recommendation for your separation and you were discharged, on 4 May 1984, with an OTH characterization.

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 to “Honorable” with corresponding changes of your narrative reason for separation and separation authority to “Secretarial Authority,” and a change to your reentry code. You contend that you were an exemplary marine during your first two years of service, to include earning three meritorious promotions, and that you regard making the mistake of falling in with the wrong crowd. You elaborated that your misconduct occurred on your birthday when you chose to smoke marijuana with fellow Marines but were discovered after military police responded to your barracks after a complaint regarding the smell of marijuana. You address a number of clemency factors, to include that you accept responsibility and regret the mistake which you made in your youth, but have taken steps during your post-discharge life to avoid similar pitfalls. You feel that you should not be defined by what you refer to as an isolated incident which occurred over 40 years ago. The Board noted that you describe a number of charitable and volunteer efforts which you purport to participate in, such as having served on the boards for ██████████ ██████████ the ██████████ and ██████████. You also claim to travel on missionary trips to assist orphanage and migrant worker camps in ██████████. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

After thorough review, the Board concluded these 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 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Moreover, the Board did not concur with your description of your OTH discharge being due solely to the “isolated incident” of your drug abuse misconduct in light of your previous NJP for violating orders by consuming alcohol in government buildings, as well as your administrative counseling for driving under the influence, presumably of alcohol. The Board noted the statement from your Non Commissioned Officer in Charge to your Commanding Officer where he stated, “[d]uring liberty hours when supervision is at a minimum [Petitioner] is easily persuaded to break rules and regulations by others.... Because of his inability to follow rules and regulations I feel [Petitioner] has no general value to the Marine Corp.” In the Board’s opinion, this assessment of your conduct also contradicts your description that your discharge was based on a single incident of poor judgement. 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 post-discharge 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 the 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 is attached 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,

11/18/2023

