



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

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Docket No. 7801-23

Ref: Signature Date

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Dear █:

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 15 November 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).

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined 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 18 June 1984. On 7 May 1986, you were found guilty at Summary Court-Martial (SCM) of a violation of Article 112(a) of the Uniform Code of Military Justice, for wrongful use of marijuana. On 5 June 1986, you received non-judicial punishment (NJP) for two occasions of being absent from your appointed place of duty, an orders violation, and a second wrongful use of marijuana. As a result of this misconduct, you were processed for administrative separation.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file. In such cases, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 8 July 1986 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is “Misconduct – Drug Abuse,” your separation code is “HKK1,” and your reenlistment code is “RE-3B.”

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. You contend: (1) you believe you were having a mental health crisis in service due to your wife’s affairs with other Marines, (2) you were betrayed by your wife, a Marine, and by your fellow Marines with who she had affairs, (3) you asked and begged for help from senior staff NCO’s, in addition to your Commanding Officer, who responded to you in degrading ways, (4) you told the chaplain you wanted to die and that you could see yourself killing yourself because of the pain, (5) you made a stupid decision to smoke marijuana to rid yourself of the pain, (6) you know what you did was wrong and you should have sought more help, but during the 1980’s there wasn’t much assistance during a mental health crisis, (7) since discharge you received counseling for your second suicide attempt, (8) after many years of therapy you are now a better man who has obtained a Level 1 fingerprint card from ██████████, which clears you to work around physically abused children, (9) you are now a Project Manager for a restoration company in ██████████, ██████████, and you love what you do—taking care of families whose lives have been thrown into chaos due to water, mold, etc, and (10) you are seeking an upgrade in order to qualify for veterans’ benefits. The Board noted you raised the issue of suffering from a mental health condition incurred during your military service, but did not respond to the Board’s request for materials or documentation to support your assertion. For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214, a personal statement, advocacy letters, and a copy of your State of ██████████ Department of Public Safety Level One Fingerprint Clearance Card.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two drug offenses. 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 also considered the negative impact your conduct likely had on the good order and discipline of your unit. Further, the Board noted you were given an opportunity to continue your service after your SCM, but continued to commit misconduct. 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

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 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,

11/20/2023

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Executive Director

Signed by: █