



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. 7804-23
Ref: Signature Date

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Dear ■

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 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, 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 began a period of active duty on 18 August 1997. Upon your enlistment, you admitted the use of marijuana in two occasions. On 13 January 1998, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. As a result, you were notified of administrative separation processing for drug abuse during which you waived your rights. The commanding officer (CO) of Marines Awaiting Training Company recommended to the separation authority that you receive an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to drug abuse. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 29 March 1998, 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 for a discharge upgrade and contentions that: (a) your discharge should be upgraded based on your merits and achievements during your time of service, (b) you were suffered from depression of home life without your father, which led you to smoke marijuana and subsequently to be discharged, (c) you experienced additional trauma while witnessing the deaths of two Marines during boot camp, (d) the Marine Corps did not provided any grief support and or literature in the subject, or any guidance whatsoever, and (e) you were never on a drug waiver following your NJP and were not allowed to explain that you had only smoked marijuana twice in 30 days. Additionally, the Board noted you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to respond to the Board’s 22 September 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no supporting documentation describing post-service accomplishments.

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related 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. 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. Even in light of the Wilkie Memo and reviewing the record liberally and 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. 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 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,

11/19/2023

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Executive Director

Signed by: █