



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

■  
Docket No. 8056-23  
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 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 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 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 active duty on 9 February 1993 after receiving a Moral Waiver of Enlistment Standards based on your previous civilian offenses of trespassing, petty larceny, multiple speeding tickets, and pre-service marijuana use. You signed a Statement of Understanding regarding the Marine Corps Policy Concerning Illegal Use of Drugs in conjunction with this waiver.

On 28 October 1996, you were referred to the Consolidated Substance Abuse Counseling Center (CSAAC) as a result of positive urinalysis for tetrahydrocannabinol (THC). The CSAAC determined you were a cannabis abuser. On 20 November 1996, you were convicted at Special Court Martial (SPCM) of wrongful use of marijuana.

On 18 December 1996, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. The same day, you waived your right to consult counsel and to have your case heard by an

administrative discharge board. You submitted a statement denying the charge and finding of wrongful marijuana use, stating you had been in clubs and parties where people had been using marijuana, and requested a General (under Honorable Conditions) characterization of service. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were discharged on 5 March 1997.

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 characterization of service and your contention that you tested positive for THC due to close contact with others who were smoking marijuana. For purposes of clemency and equity consideration, the Board considered the advocacy letters you provided.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board was not persuaded by your contention that your positive drug test for THC was due to close contact with others who were smoking marijuana and noted that you waived your right to have your case heard by an administrative discharge board, which was your chance to argue your case for a false-positive test and your opportunity for potential retention or to earn a better characterization of service. The Board further noted that you did not provide any evidence to substantiate your contention. 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. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command.

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 good character, 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,

12/5/2023

