



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. 8671-23
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 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).

You enlisted in the Marine Corps and began a period of active duty on 13 April 2004. On 11 August 2004, you began a period of unauthorized absence (UA) that ended in your surrender on 14 November 2004. After surrender, you made a voluntary admission that you used marijuana prior to your UA. You then refused drug screening and treatment and, on 19 November 2004, due to your admission, you were recommended for administrative separation.

On 7 December 2004, you made an unsolicited and voluntary statement to your command legal officer that you were bisexual and had gone UA because you did not want anyone else to find out about your sexual orientation. You stated you were afraid other Marines would make fun of you if they found out. A fact finding inquiry was initiated by the command to confirm your voluntary statement and, on 16 December 2004, you were notified of administrative separation proceedings for misconduct due to drug abuse, misconduct due to commission of a serious

offense, and homosexual conduct. On this same date, you consulted with counsel, acknowledged your receipt of notification, and waived your rights to an administrative board and to submit a statement.

On 20 December 2004, you received non-judicial punishment (NJP) for UA and wrongful use of marijuana. Subsequently, your Commanding Officer recommended you be administratively separated for misconduct (due to drug abuse and commission of a serious offense) and homosexual conduct. This recommendation was legally reviewed and, on 19 January 2005, the Commanding General ordered your separation, with an Other Than Honorable (OTH) characterization of service, by reasons of homosexual conduct, misconduct due to drug abuse, and misconduct due to commission of a serious offense, stating, “the primary basis for reporting purposes will be misconduct due to drug abuse.” On 1 February 2005, 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 change your discharge character of service and contention that you are eligible for upgrade under the Under Secretary of Defense Memorandum of 20 September 2011 (Correction of Military Records Following Repeal of 10 U.S.C. 654). The memorandum sets forth the Department of the Navy's current policies, standards, and procedures for correction of military records following the “don’t ask, don’t tell” (DADT) repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with the guidance to normally grant requests to change the characterization of service to “Honorable,” narrative reason for discharge to “Secretarial Authority,” separation code to “JFF,” and reentry code to “RE-1J” when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide any advocacy letters or documents supporting your post-service activities or accomplishments.

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Additionally, 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. Finally, the Board determined you were not discharged solely under the DADT policy and your record contains misconduct related aggravating factors that disqualifies you from receiving relief under DADT repeal policy memorandum. 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 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 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,

11/27/2023

