



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. 8900-23
Ref: Signature Date

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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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 26 January 2024. 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 2 February 1982. On 21 December 1983, you received non-judicial punishment (NJP) for wrongful use of marijuana. Additionally, you were issued an administrative remarks counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Nonetheless, on 17 May 1984, you received a second NJP for wrongful use of marijuana. You were again issued an administrative remarks counseling, this time concerning your failure to adhere to Marine Corps Standards.

On 15 June 1984, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. On 16 June 1984, you received a third NJP for wrongful use of marijuana. Two days later, on 18 June 1984, you elected your rights in relation to the administrative separation process. You elected to consult with legal counsel but declined the right to submit a statement or appear before an

administrative discharge board (ADB). On 19 June 1984, your Commanding Officer (CO) recommended you be separated with an OTH stating: “██████████ has been an administrative burden and has disrupted the good order and discipline of this unit. His repeated convictions for drug use indicate his determination in disregarding military regulations and sets a poor example to other Marines.” The Separation Authority then directed your discharge with an OTH characterization of service, and you were so discharged on 19 July 1984.

As indicated above, post-discharge, you applied to this Board for a discharge upgrade. Your request was denied on 22 October 2018.

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 contentions that: (1) you were a model soldier who did everything required for the performance of your duties, (2) on your DD 214 you were given “good conduct” two months prior to discharge, (3) you desired to make the USMC a career, you felt you could not achieve it by staying in the same unit, and you asked your CO several times for a transfer or change of MOS but your CO refused, (4) you became despondent and felt unable to give your all to your military service, (5) from that point you felt you were picked on and sought out for extra duties, (6) you began drinking and using marijuana to self-medicate for depression, (7) your CO made derogatory comments to you which made you feel he did not like you, (8) you felt discriminated against, (9) you have no memory of being told you were scheduled to attend a rehabilitation program and to complete a one-day Substance Abuse Education Course, (10) you feel had you been told, you would have attended the program and perhaps been able to provide the instructor with reasons for your drinking and use of marijuana, (11) you feel the rehabilitation program should have been for both alcohol and drugs, (12) you should have been provided a legal military representative because you did not know anything about your procedural rights or whether or not your discharge was proper, (13) you had not drank or smoked any marijuana and were “clean” after your second urinalysis, but you were told by your CO you had to do another urine test—which was your third test—which only took 30 days to perform, and which you think was a “total set up” to get you out.

For purposes of clemency and equity consideration, the Board considered your statement, but noted you did not provide any other supporting documentation describing post-service accomplishments or advocacy letters.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple 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 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 repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given

multiple opportunities to address your conduct issues, but you continued to commit misconduct. Unfortunately, for these reasons, the Board determined you did not act as a model Marine as you contend.

Regarding your contention you received “good conduct” on your DD Form 214 two months prior to your discharge, this entry does appear on your DD Form 214, but it does not indicate the nature of your conduct, rather it established that on 14 May 1984 your “Good Conduct” clock restarted following your commission of misconduct.

Regarding your contentions that your CO denied your requests to change your MOS or be moved, that you were picked on or sought out for extra duties, that your CO made derogatory comments to you, or that you were discriminated against, unfortunately, you did not provide any supporting evidence for these contentions for the Board to consider. Furthermore, regarding a change to MOS or transfer, even if you requested such, your CO was under no obligation to agree.

Regarding your contention you should have been provided a legal representative, as discussed above, you elected your right to consult with legal counsel as part of the administrative separation process, and consulted with a Marine Corps Judge Advocate on 18 June 1984.

As a result of the above, 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, 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,

2/13/2024

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