



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. 9268-23
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 father's 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 December 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 entered active duty with the Marine Corps on 9 March 1981. On 9 October 1981, you were counseled on failure to be at your appointed place of duty. On 12 November 1981, you received non-judicial punishment (NJP) for five days of unauthorized absence (UA). On 22 December 1981, you received NJP for three specifications of absence from appointed place of duty. On 26 March 1982, a special court-martial (SPCM) convicted you of two specifications of wrongful possession of marijuana, two specifications of wrongfully transferring marijuana, and two specifications of wrongfully selling marijuana. As a result, you were sentenced to confinement for 120 days, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 1 July 1983, 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 upgrade your discharge and change your narrative reason for separation. You contend that your discharge was unjust and disproportionate to the misconduct given the lack of prior misconduct, young age, and circumstances of the incident. You argue that you deserve consideration for the changes to your record due to the large amount of evidence of your post service character and citizenship, the 40 years that has elapsed since your discharge, and the Presidential Pardon issued for marijuana possession. For purposes of clemency and equity consideration, the Board noted you provided a statement from your attorney, advocacy letters, and 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 NJPs and SPCM conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug related offenses. The Board determined that illegal drug distribution 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. While the Board took into consideration your contentions, they were not convinced any injustice exists with your assigned characterization of service. The Board noted you were convicted of multiple incidents of possessing and selling marijuana, conduct that is highly detrimental to the good order and discipline of your unit. Further, the Board noted that the Presidential pardon for simple possession of marijuana is not applicable to your case since you were distributing marijuana. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be upgraded based solely on the passage of time. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence you provided in mitigation and commends you for your post-discharge accomplishments and 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 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,

1/11/2024

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Executive Director

Signed by: █