



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

█  
Docket No. 10440-23

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.

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 reconsideration application on 12 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 U.S. Marine Corps and began a period of active duty service on 9 May 1980. Your pre-enlistment physical examination, on 24 January 1980, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 15 January 1982, you commenced a period of unauthorized absence (UA) that terminated after one (1) day on 16 January 1982. In lieu of disciplinary processing your command adjusted your end of active obligated service date (EAS) by one (1) additional day.

On 13 May 1982, you received non-judicial punishment (NJP) for two separate UA specifications. You did not appeal your NJP.

On 18 November 1982, you received NJP for writing eight (8) bad checks with the intent to defraud. You did not appeal your NJP. On 6 December 1982, your command issued you a "Page 11" retention warning (Page 11) documenting your UA, financial irresponsibility, a failure to pay just debts, and your repeated UCMJ violations. The Page 11 warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action or processing for administrative discharge,

However, on 3 January 1983, you commenced another UA that terminated after one (1) day on 4 January 1983. Your command again adjusted your end of active obligated service date (EAS) by one (1) additional day.

On 6 January 1983, your commanding officer vacated and enforced the suspended portion of your November 1982 NJP due to continuing misconduct. On the same day, you received NJP for your 1-day UA. You did not appeal your NJP.

On 9 June 1983, a drug screening laboratory message indicated you tested positive for marijuana. You refused NJP. On 27 June 1983, your command placed you on a urinalysis surveillance program. Unfortunately, on 26 August 1983, a drug screening laboratory message indicated you again tested positive for marijuana.

On 21 September 1983, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and pattern of misconduct. You consulted with counsel prior to electing your rights in connection with your proposed separation. Ultimately, on 21 December 1983, you were discharged from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-3B reentry code.

On 18 November 2014, the Board denied your initial petition for relief. On 29 January 2018, the Board again denied your discharge upgrade petition.

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 change to your reason for separation. You contend that: (a) your drug test was mishandled by the drug testing laboratory and your case was a matter of innocent ingestion, (b) in 1983 a commissioner reviewed military drug testing procedures and found that they did not meet forensic standards, (c) your chain of command made an egregious error in discretion and fact when issuing your discharge due to issues with the drug urinalysis, and (d) your discharge was improper at the time of issuance because you received disproportionate treatment due to your race, which caused you to experience unique discrimination given the context of the times of your service. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to

deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board was not persuaded by your argument that the Marine Corps made an error of discretion to process you for an administrative separation. The Board noted that your drug abuse required mandatory processing for separation and did not give the command any discretion to or not to process you for separation, unlike after your first positive drug test result. The Board also noted, that the "Einsel Commission" report you cited dealt with Army and Air Force drug testing irregularities, not the Department of the Navy. Notwithstanding, the Board determined that you did not provide any credible or convincing evidence to indicate that your two (2) positive urinalysis tests were flawed either during the collection and/or testing process. Additionally, the Board determined the command met the burden of proof of wrongful use by the preponderance of the evidence standard. Lastly, the Board determined you did not provide any convincing evidence that you were somehow the victim of racially motivated disparate treatment.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.6 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

1/26/2024

