



**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. 10726-23  
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 initially enlisted in the U.S. Navy and began a period of active duty service on 23 August 1973. Your pre-enlistment physical examination, on 18 June 1973, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You last reenlisted, on 10 April 1985, while holding the rank of Chief Petty Officer (E-7).

On 23 March 1986, you submitted a request for an Honorable discharge based on being a conscientious objector (CO). On 28 March 1986, you underwent a psychiatric evaluation. The Medical Officer's (MO) assessment noted, in part:

█ recent claim to be a conscientious objector is of doubtful credibility because of his length of military service prior to making such a claim, the time

relationship of his marital difficulties and his request for separation, and his actions when the opportunity arose to assert beliefs consistent with those now asserted (accepting promotions without objection, not refusing to fire a weapon when qualifying in small arms training).

In addition, conscientious objectors are by definition persons who object to participation in war. In ██████████ request for separation all references are to his need to get out of the Navy and not to his objection to war or participation in it. His references to religion are couched in terms of "God as the universal subconscious mind" and "A discipline of accepting only positive ideas as good". There is a complete lack of explanation as to how his religious training and beliefs have led him to become a conscientious objector.

The MO concluded by opining: (a) there was no evidence of any psychiatric illness, (b) no evidence of personality disorder, (c) your CO application did not meet CO criteria and your sincerity was questionable.

A Navy Judge Advocate (JAG) conducted your CO hearing on 24 April 1986. The JAG specifically stated in his finding and recommendations:

It is my opinion that ██████████ request for [CO] discharge should be denied. In my opinion ██████████ desires a discharge because of his domestic problem. The underlying basis for his request is the fact that his wife has left him and desires to go to ██████████ ...As late as August or September 1985 he was apparently seriously discussing career options, including Officer Candidate School...I find no objective evidence of any religious or philosophical beliefs by ██████████ which would qualify for CO status.

On 1 May 1986, your commanding officer (CO) recommended disapproval of your CO application. In his endorsement, he unequivocally stated, in part:

██████████ has not shown based on the evidence he is truly a conscientious objector. His application for conscientious objector status was submitted shortly after he discussed humanitarian assignment and/or duty swap because of marital problems. ██████████ has been onboard since June 1985 and up to this time has shown no signs of objecting to war or nuclear weapons. In fact he had been pursuing a degree and planned to submit an application for commissioned officer status.

On 30 July 1986, Commander, Naval Military Personnel Command (NMPC) denied your CO request. NMPC determined that you did not meet the CO status criteria.

On 14 September 1986, a Substance Abuse Report (SAR) noted you tested positive for marijuana. The SAR also noted you were transferred to another command while awaiting court-martial.

Following your positive urinalysis test, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) for the good of the service to escape court-martial for the wrongful use of marijuana. As a result of this course of action, you were spared the stigma of a court-martial conviction for your drug use, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 8 December 1986, you were administratively reduced to the rank of E-3 (MMFN) and, on 12 December 1986, you were separated from the Navy with an OTH discharge characterization and assigned an RE-4 reentry code.

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 narrative reason for separation. You contend that: (a) since your separation you have been an honorable man who exemplifies the best of society, (b) based on your post-service accomplishments and leadership of others, you are worthy of a discharge upgrade, and this would be in keeping with the clemency guidance of the Wilkie memorandum, (c) you ingested marijuana at a time that marijuana was viewed differently than today, (d) President Biden issued a pardon for simple possession of marijuana, and although you were not charged with simple possession, you were charged with ingesting marijuana, which is comparable to the Presidential pardon, (e) you should be granted clemency because of your exemplary naval service, the extensive responsibilities you have held aboard merchant marine vessels, and your continuing to give to your country through educating USMMA midshipmen, and (f) the Wilkie factors encourage clemency in your case as you were not a regular user of marijuana, you possessed it one time, and it was for the purposes of carrying out an act of desperation. For purposes of clemency and equity consideration, the Board considered the entirety of 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 Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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 noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 Sailor. The Board was very troubled by your CO application that was based on false pretenses and improper motives, and the fact that you knowingly and purposely used marijuana expressly



to get separated from the Navy to avoid your obligated service.<sup>1</sup> 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.

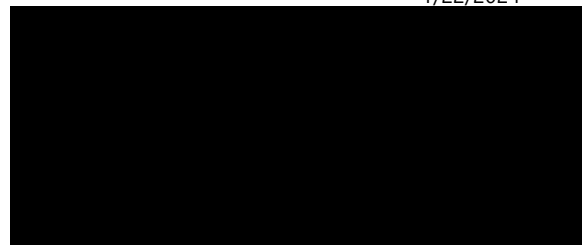
The Board determined that your contention of a blanket presidential pardon for federal marijuana possession convictions was misplaced and without merit. The Board noted that on October 6, 2022, President Biden issued a presidential proclamation pardoning federal convictions for simple marijuana *possession* offenses in violation of the Controlled Substances Act, or in violation of D.C. Code 48-904.01(d)(1). The Board noted neither code provision applied to your case as your drug-related offense was charged as a violation of the Uniform Code of Military Justice, and that your drug offense involved the wrongful use, not possession, of marijuana.

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 and commends you for your post-discharge accomplishments, 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,

1/22/2024



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<sup>1</sup> The Board noted as part of your application you included a letter dated 26 December 2010 sent to the U.S. Merchant Marine Academy explaining the circumstances of your OTH discharge. This letter described, *inter alia*, how you intentionally ingested marijuana *after* being notified of a random urinalysis so you would test positive and be administratively separated.