



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



Docket No. 826-24
Ref: Signature Date



Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 23 February 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 to 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 with a waiver for pre-service drug use and began a period of active duty on 7 November 2000. After fewer than 60 days of active duty, you absented yourself without authority on 3 January 2001 and remained absent until voluntarily surrendering to military authority on 7 June 2001, at which time you submitted to a routine urinalysis test. The results of your drug screening urinalysis were positive for marijuana metabolites, and you accepted Summary Court Martial (SCM) for your violations of the Uniform Code of Military Justice (UCMJ) under Article 86, for your unauthorized absence (UA), and under Article 112a, for your wrongful use of marijuana.

You were subsequently notified of processing for administrative separation on 24 September 2001 for misconduct due to drug abuse. After consulting legal counsel, you elected to waive

your right to a hearing before an administrative separation board and did not submit a statement regarding your proposed separation. However, your platoon commander and first sergeant both submitted letters documenting their discussions with you regarding your situation. Your platoon commander noted that you were a diligent worker and a pleasure to command, but that you had made it clear you would “do anything to return to [your] family.” Likewise, your first sergeant related that you had made your desire clear “to be discharged from the Marine Corps under any circumstances.” In his forwarding recommendation for your discharge under Other Than Honorable (OTH) conditions, your commanding officer noted that you were “a young man with a great deal of responsibility on your shoulders” due to your estrangement from the mother of your 9-month old child and that you desired to return home. Your separation for drug use was approved and you were discharged, on 15 October 2001, with an OTH. You served less than a year of active service and with final proficiency and conduct marks of 3.5 and 2.6, respectively.

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 to “Honorable” and to change your narrative reason for separation and separation code to reflect “Secretarial Authority.” You contend that you regret that choices you made in your youth during your Marine Corps career but that you believe your discharge characterization is unjust because it no longer serves a useful purpose; since it does not reflect who you are today. For purposes of clemency and equity consideration, you submitted five letters attesting to your post-discharge character and community service. These include volunteering with the American Legion for causes benefitting ill and abuse children, enhancing the lives of other veterans, serving as a road captain, and a pending endorsement in upcoming elections to serve as your Post’s sergeant-at-arms.

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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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. Further, the Board weighed your brief period of active duty service against the nature of your misconduct. Finally, the Board considered your unwillingness to fulfill your contractual obligation to the Marine Corps.

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. 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 the 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 is attached 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, _____

3/7/2024

