



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

█  
Docket No. 1989-24  
Ref: Signature Date

█  
█  
█

Dear █

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 8 March 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 16 November 1998. On 4 November 1998, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 9 November 1998, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 27 July 1999, you received non-judicial punishment (NJP) for insubordinate conduct, and for

three (3) separate specifications of failing to obey a lawful order. You did not appeal your NJP. On 1 November 2000, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana. On 16 November 2000, your drug dependency screening at ██████████, ██████████ ██████████ concluded you did not meet any DSM IV criteria for drug/alcohol abuse or dependency.

On 20 November 2000, you received NJP for the wrongful use of marijuana. You did not appeal your NJP.

On 20 November 2000, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse and commission of a serious offense. The basis for your serious offense recommendation was evidenced by your delivery to civilian authorities in ██████████ pursuant to arrest warrants for misdemeanor larceny, check forgery, and uttering forged checks for a total amount in excess of six thousand dollars. You stole a person's briefcase and checkbook, and then forged the victim's signature on certain checks and attempted to deposit/cash them at a ██████████ Credit Union.

You expressly waived in writing your rights to consult with counsel, submit written rebuttal statements, and to request an administrative separation board. In the interim, on 8 December 2000, you received NJP for being absent from a squadron urinalysis, and for making a false official statement. You did not appeal your NJP. On 11 December 2000, you were delivered into civilian custody to face criminal charges. Ultimately, on 25 January 2001, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4B reentry code.

On 2 December 2010, the Naval Discharge Review Board (NDRB) denied you any relief. The NDRB determined your discharge was proper as issued and no relief was warranted.

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 reentry code. You contend that: (a) you are asking for your reenlistment code to be changed so you may rejoin the military and show you are still very much interested in serving honorably, (b) you come from a military family, (c) you joined at seventeen (17) and were not mature enough to make the appropriate decision to no use marijuana, (d) post-service you have not had any drug issues nor any other legal issues that would prohibit you from joining, (e) you are also still extremely physically active and able to perform any task assigned to you, (f) now that you are older you have the maturity and awareness to make the correct decisions and prove to yourself and to your country that you can be an asset to the military, (g) you plead for the opportunity to make your family proud and continue your military career, and ending it in an honorable way, and (h) you are willing to do whatever it takes to accomplish this, including any programs, treatment or urinalysis on a continuous basis, even at your own expense in order to be permitted to reenlist. 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 or upgraded reentry/reenlistment code. 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 and an RE-4B reentry code are generally warranted for misconduct and are 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 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.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge or reentry code solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge and reentry code, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge and RE-4B reentry code. 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, \_\_\_\_\_

3/13/2024

