



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

█  
Docket No. 0787-23  
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 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 23 August 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 enlisted in the Marine Corps and commenced active duty on 20 January 1978. After a period of continuous Honorable service that included a second enlistment period, you reenlisted on 9 March 1984 and commenced a third period of active duty.

On 7 November 1985, you received Meritorious Mast. However, on 26 December 1985, you received non-judicial punishment (NJP) for operating a vehicle while intoxicated. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. In addition, you were referred to the Level I Alcohol Abuse Rehabilitation Program and you completed the █

On 2 July 1986, you received a Page 11 retention warning/counseling for a second alcohol-related incident shortly before you received Meritorious Mast. However, on 29 Dec 1986, you received NJP for wrongful use of marijuana.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Marine Corps on 19 March 1987 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Misconduct Drug Abuse (admin discharge board required but waived)," your reentry code is "RE-3B," and your separation code is "HKK1," which corresponds to misconduct - drug abuse, admin discharge board required but waived.

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 change your discharge characterization of service and your contentions that you made one mistake, you were young and immature, you continued to provide loyalty and dedication to the Marine Corps up until the date of your discharge, you are need of Department of Veterans Affairs (VA) benefits, and you earned two previous Honorable discharges. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments and advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by two NJPs in your final enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. Additionally, there is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, the Board noted your record of misconduct also included a driving under the influence of alcohol offense. Therefore, the Board was not persuaded by your argument that you made only one mistake. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 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.

In reviewing your record, the Board believes that you may be eligible for veterans' benefits which accrued during your prior periods of Honorable service. However, your eligibility is a matter under the cognizance of the VA. In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your prior periods of Honorable service.

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,

8/31/2023

