

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 0438-24 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 25 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 Marine Corps Reserves and commenced initial active duty for training (IADT) on 8 May 1985. Your enlistment contract specified a post-IADT requirement of yearly participation in forty-eight scheduled drills and no less than fourteen days active duty for training.

On 27 August 1985, you received non-judicial punishment (NJP) for unauthorized possession of alcoholic beverages in an unauthorized area. 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. On 2 October 1985, you were released from IADT. On 7 May 1986, your Reserve Retirement Credit Report for the period 8 May 1985 to 7 May 1986 indicated a satisfactory year with one-hundred-sixty-three active-duty points and twenty-one drill points.

On 2 February 1987, your command received notification of positive urinalysis for Tetrahydrocannabinol (THC), and you received NJP for wrongful possession of a controlled substance on 22 February 1987. Consequently, on 6 March 1987, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You subsequently waived your right to have your case heard by an administrative discharge board (ADB). On 7 May 1987, your Reserve Retirement Credit Report for the period 8 May 1986 to 7 May 1987 indicated an unsatisfactory year with zero active-duty points and thirty-four drill points. On 13 May 1987, the Separation Authority directed your discharge with an OTH characterization of service, and you were so discharged on 19 May 1987.

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 of water contamination and medical misdiagnosis. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or 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 your NJPs, 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. Finally, the Board noted you provided no evidence, other than your personal statement and documentation of a non-seasonal rhinitis diagnosis, to substantiate your contentions.

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, 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.

As a part of the Caring for Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can receive all the families Act of 2012, qualifying Veterans can rece

December 31, 1987. The Board recommends you contact your nearest VA office to determine your eligibility for care.

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,

4/8/2024