



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

█  
Docket No. 2507-24  
Ref: Signature Date

█  
█  
█

Dear Petitioner:

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 May 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, 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 began a period of active duty on 23 January 1996. During your enlistment process, you acknowledged and signed a statement of understanding concerning the illegal use of drugs. On 15 November 1996, you tested positive to wrongful use of a controlled substance-marijuana. On 3 January 1997, you were counseled concerning the wrongful use of a controlled substance and advised that further disciplinary infractions or continuation of deficient performance will result in administrative separation. On 15 January 1997, you were convicted by summary court martial (SCM) for wrongful use of a controlled substance-marijuana. You were found guilty and sentenced to reduction in rank, a period of confinement, and forfeiture of pay. On 18 March 1997, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 29 April 1997, you were so discharged.

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. For purposes of clemency and equity consideration, the Board noted you submitted a copy of a Department of Veterans Affairs (VA) Administrative Decision Document and a letter of Rejection of Application for Discharge Review from the Naval Discharge Review Board (NDRB).

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 related 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, 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. Finally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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.

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 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,

6/11/2024

