

DEPARTMENT OF THE NAVY

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

> Docket No. 3574-24 Ref: Signature Date

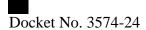
Dear Petitioner:

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 10 June 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).

You enlisted in the Marine Corps and commenced active duty on 27 August 1981. On 25 January 1982, you commenced a period of unauthorized absence (UA) that ended on 28 January 1982. On 19 February 1982, you received Summary Court Martial (SCM) for dereliction of duty by abandoning your rifle, leaving post without being properly relieved, breaking restriction, and two specifications of failure to go to appointed place of duty at time prescribed. On 26 May 1983, you received SCM for wrongful use of marijuana.

Unfortunately, some 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 on 6 January 1984 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is



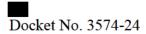
"Separation in lieu of trial by Court-Martial," your reentry code is "RE-4," and your separation code is "KFS1," which corresponds to separation in lieu of trial by court-martial.

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 suffered from undiagnosed attention deficit hyperactivity disorder (ADHD), you self-medicated with marijuana, and post-discharge you have learned better coping skills, have had a successful career, and no longer need to self-medicate. Additionally, the Board noted you checked the "Mental Health" box on your application but chose not to respond to the 8 April 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter you provided.

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 SCMs and separation in lieu of trial by court-martial, 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. Therefore, the Board was not persuaded by your argument that your drug abuse should be mitigated since it was similar to alcohol abuse. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your request for an undesirable discharge to avoid trial for your offenses.

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 good character, 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,

6/27/2024

