



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

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Docket No. 3986-24  
Ref: Signature Date

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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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 August 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 this 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.

During your enlistment processing you were granted a waiver after disclosing minor traffic violations and marijuana use. You enlisted in the U.S. Marine Corps and began a period of active duty on 19 September 1981. On 29 July 1982, you received nonjudicial punishment (NJP) for violating a lawful general regulation by unlawfully possessing marijuana. Your punishment included forfeiture of pay, restriction, extra duty, and reduction in rank to E-1, although the reduction in rank was suspended for six months. However, the suspension was later vacated due to your continued misconduct. On 16 September 1982, you were convicted by a summary court-martial (SCM) of disobeying a lawful order and breaking restriction, resulting in a sentence of

20 days of confinement at hard labor and forfeiture of \$200.00 pay for one month. The convening authority suspended your confinement for six months on 28 September 1982.

Subsequently, you received two more NJPs for disobeying a lawful order, communicating a threat, and insubordinate conduct. As a result, you were issued administrative remarks retaining you in the Marine Corps and warning you that further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Finally, on 30 June 1983, you were convicted by a second summary court-martial (SCM) for failing to report to your appointed place of duty and disobeying a lawful order. As punishment, you were sentenced to forfeiture of \$382.00 pay per month for one month and 30 days of confinement at hard labor.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct (POM). You elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service adding, “[Petitioner’s] discreditable conduct and involvement with military authorities is clearly documented. His disregard for our rules and regulations cannot be tolerated. His record shows that he has no intent or desire to improve himself or conform to standards.” The SA directed your OTH discharge from the Marine Corps by reason of misconduct due to POM and, on 22 August 1983, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. During this hearing you contended you had a problem with alcohol and were never offered treatment and that your commanding officer labeled you after your rank reduction. The NDRB denied your request on 27 March 1995, after determining your discharge was proper as issued.

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 upgrade your discharge character of service and your contentions that: (1) you requested a change to your Military Occupational Specialty (MOS) to food service, but your request was denied. Instead, you were assigned to some of the most challenging details, working 12-hour shifts, (2) you felt that you were being punished and harassed because of your request, labeled a "shitbird," and as a result, you acted inappropriately and broke rules, actions which you now regret, (3) your Gunnery Sergeant testified on your behalf, recommending that you be retained in the Marine Corps and transferred to the mess section, (4) when you accepted the discharge, you waived your rights based on advice from your counsel, who incorrectly informed you that your discharge would automatically be upgraded to general six months after separation, and (5) your enlisted supervisors treated you fairly, but you perceived racial motivations from some officers, which led you to react poorly as a young man. Additionally, the Board noted you checked the “Other Metal Health,” box on your application but chose not to respond to the 16 April 2024 letter from the Board requesting evidence in

support of your claim. The Board further noted you did not provide documentation for clemency and equity consideration.

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 and SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the fact that your misconduct involved a drug offense and determined that illegal drug involvement 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. While the Board acknowledged your remorse, the Board noted you were provided several opportunities to correct your conduct deficiencies during your service: however, you continued to commit additional misconduct. Finally, the Board observed you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board was not persuaded by your argument that you were treated unfairly.

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 for misconduct. 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. Accordingly, given the totality of the circumstances, the Board determined 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,

9/11/2024

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