



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

██████████  
Docket No. 4968-24  
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 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).

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 and commenced active duty on 17 June 1981. On 23 February 1982, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 19 September 1983, you received NJP for wrongfully consuming a cannabinoid. On 21 May 1984, you again received NJP for dereliction of duty by failing to inspect the fuel in a vehicle and forgery of signatures related to whether or not the inspection had been conducted.

On 10 January 1985, you were found guilty at Special Court-Martial (SPCM) of wrongful use of "LSD." Your conviction was based largely on your pre-trial admission of use of LSD. You were

sentenced to confinement at hard labor for four months, forfeiture of \$580 pay per month for four months, and reduction in paygrade to E-1.

On 29 November 1985, the U.S. Navy-Marine Corps Court of Military Review reviewed your case and found error. Specifically, the Court found the prosecution failed to establish that your pre-trial admission of use of LSD was not involuntary. The Court also found the remaining evidence of your guilt was clearly insufficient to warrant a rehearing of the case, and therefore the findings and sentence of the trial were set aside, and the charges dismissed.

In your appellate leave request, made following the conclusion of your trial, you were informed that if the findings and sentence of the trial were set aside, you would be administratively separated from the Navy due to Convenience of the Government. Unfortunately, the documents pertinent to your appellate leave request 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.

On 25 June 1986, your commanding officer (CO) recommended you be discharged, by reason of Convenience of the Government, in accordance with your appellate leave request. Your CO further recommended, based on your service record, and because you were never counseled regarding your misconduct, that you received a General Discharge (under honorable conditions). Ultimately, on 29 August 1986, 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 to change your discharge characterization of service, and your contentions that: (1) you were charged with introduction of drugs to the base, to your friends, and to use of drugs, but it was all based on hearsay, (2) you were found innocent at court-martial, (3) you were found guilty of using drugs even though you passed the urinalysis, (4) you refused to admit any guilt and you were assaulted by your commander, and (5) another sergeant named you in order to try to reduce his own charges. 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 that your second NJP 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board considered that you were fortunate to receive a GEN characterization based on your extensive record of misconduct.

Regarding your contentions as they relate to your SPCM. As outlined above, the findings and sentence of your SPCM were set aside, and the charges dismissed. These actions are not equivalent to a finding of innocence, as you contend, but did indicate the Government lacked sufficient evidence to try the case. Your official record does not contain your urinalysis results, any evidence that you were assaulted by your commander, or that you were falsely accused by another service member of a drug offense. The Board noted that you did not provide any evidence, other than your statement, to substantiate your allegations.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. 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 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,

6/26/2024

