



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. 5145-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 July 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 on the evidence of record.

You enlisted in the U.S. Marine Corps and commenced a period of active duty on 8 July 1991. On 23 May 1993, you were issued administrative remarks concerning the following deficiencies: "On 17 Apr 93 and 31 Dec 93, military police reports name you as a suspect in one affray, two aggravated assaults and one disobedience of a lawful order. These incidents reflect conduct not in keeping with the high standards expected of a Marine while on an off duty status." The remarks further advised that failure to take corrective action will result in disciplinary action under the UCMJ, and administrative discharge, possibly under Other Than Honorable (OTH) conditions. You were afforded an opportunity to make a statement and chose not to do so. An NCIS (Naval Criminal Investigative Service) report, dated 19 July 1994, documents you were

implicated in the use and distribution of marijuana. Consequently, you were charged at a special court-martial of wrongful use of marijuana and two specifications of wrongful distribution of marijuana.

With the advice of military counsel, you entered into a pretrial agreement to plead guilty at a summary court-martial and waive your right to have your case heard before an administrative discharge board. On 1 November 1994, pursuant to your pleas, you were found guilty at a summary court-martial (SCM) of the wrongful use of marijuana and sentenced to reduction in rank to E-2, forfeiture of \$600.00 pay per month for one month, and confinement for 15 days. On 28 November 1994, you were counseled concerning your refusal to undergo a medical officer's evaluation for drug abuse and drug dependency. Ultimately, on 8 February 1995, you were discharged with an Other Than Honorable (OTH) characterization of service due to drug abuse.

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 and to have your narrative reason for separation changed. You contend: (1) you were an outstanding Marine with exemplary performance, (2) after returning from your second tour in the middle east, your company was forcing Marines out, (3) you were falsely accused of drug charges, (4) although there was no evidence of wrongdoing, you were told if you fought the court-martial you would win based on lack of evidence, but at some point they would find a way to get rid of you with a Bad Conduct Discharge, (5) you witnessed many Marines falsely charged for offenses, and (6) after years of resentment you now have the confidence to address these issues and fight for justice. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included drug offense. The Board determined that marijuana 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 the Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. Finally, the Board was not persuaded by your contentions regarding false accusations and lack of evidence to substantiate your guilt. The Board noted you voluntarily pleaded guilty pursuant to a pre-trial agreement. This agreement spared you the possibility of a special court-martial conviction, extensive punishment beyond what could be awarded at a SCM, and a possible punitive discharge. Therefore, the Board found no error or injustice with your guilty plea to drug abuse or administrative separation based on your admission under oath that you wrongfully used marijuana.

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. 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 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 is attached 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, _____

8/1/2024

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Executive Director

Signed by: █