



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

█
Docket No. 5458-24
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 7 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 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 U.S. Marine Corps and began a period of active duty service on 22 August 1994. On 13 September 1993, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 16 September 1993, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 10 November 1997, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana (THC) above the testing cut-off level. On 17 November 1997, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (THC). You did not appeal your NJP. On 24 November 1997, you underwent a drug dependency screening. A substance abuse counselor determined that you did not meet the DSM IV criteria for alcohol/drug dependency or abuse and recommended that you be processed for separation. A Navy Medical Officer (MO) concurred with the substance abuse counselor's diagnosis.

On 16 December 1997, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit statements, and to request an administrative separation board. Ultimately, on 15 January 1998, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4B reentry code.

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 and contentions that: (a) in an isolated incident, you tested positive for THC and your command immediately subjected you to both NJP and an OTH administrative separation, (b) your command gave no consideration to your years of good conduct, your age, or the circumstances surrounding this incident, (c) your chain of command also did not offer rehabilitative services, instead discharging you for an infraction that would be considered a minor offense today, (d) you served with distinction for three years, excelling as a leader and setting an example for your fellow enlisted Marines, (e) you acknowledge that your misconduct was a grave mistake that has negatively impacted most of your adult life, but your record of meritorious service justifies leniency, (f) over the past 40 years, the United States Armed Forces has grown to acknowledge that its members are not immune to mistakes, and in recent years, certain policies promulgated in the Wilkie Memorandum were drafted to rectify those mistakes, and (g) in your situation, a history of good conduct and outstanding performance should hold more weight than one act of misconduct. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, including your personal statement.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use is still against Department of Defense regulations and its use in any form is still not permitted for recreational use while serving in the military. 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. The Board determined that characterization

under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also determined your contention about the lack of rehabilitative services was without merit. The record reflected that you were properly screened for drug dependency and substance abuse counselors determined that you were not dependent on drugs. The Board concluded this finding is consistent with your contention that your drug use was an isolated incident. Had substance abuse counselors and MOs determined otherwise, you would have been offered the appropriate drug rehabilitation treatment in connection with your administrative separation. Moreover, the Board noted that your drug use offense, even now, is not considered a minor offense and requires mandatory separation processing under applicable Marine Corps regulations. Thus, your command did not have any discretion whether or not to process you for an administrative separation for your drug-related misconduct.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

8/12/2024

█