



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

██████████
Docket No. 5628-24
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 24 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 12 January 1968. In May 1970, you were investigated by the Naval Investigative Service for possible wrongful use of marijuana in ██████████, ██████████. During the investigation, two witnesses stated they observed you smoking what they believed to be marijuana. Two other witnesses stated they used marijuana with you. Consequently, you were notified of pending administrative separation processing with a undesirable discharge (Other Than Honorable (OTH)) discharge by reason of unfitness with an for possession and use of marijuana, the probable incurrence of disciplinary problems, and the adverse effect your retention would have on your associates. You elected to consult with legal counsel and requested an administrative discharge board (ADB).

On 5 October 1970, you received non-judicial punishment (NJP) for violating a lawful order by appearing at a Greyhound Bus Depot out of uniform.

On 9 December 1970, an ADB was convened during which you testified to your use of marijuana approximately eight or nine times, both in ██████████. You expressed remorse for your actions and your desire to continue to serve in the Marine Corps. The ADB found that you had committed misconduct and recommended that you received an OTH discharge due to your marijuana use.

On 10 December 1970, you commenced a period of unauthorized absence (UA) ended by your surrender on 14 December 1970. Following your return, you received NJP for UA and were reduced in rank to Corporal.

On 3 February 1971, the separation authority approved the ADB recommendation and you were so discharged on 12 February 1971.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 29 January 1975, the NDRB directed an upgrade of your discharge from “undesirable/unfit” to “general/unfit.”

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 believe you deserve an upgrade of your discharge because you earned a Navy Achievement Medal and a Navy Commendation Medal, both with a “V” for Valor. 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 two NJPs and your admission of wrongful use of marijuana, 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command, especially given your status, as a non-commissioned officer, at the time of your marijuana use. Finally, the Board believed that considerable clemency was already extended to you when the NDRB upgraded your original OTH discharge to a discharge under honorable conditions. Therefore, the Board did not find your arguments for further relief persuasive.

As a result, the Board concluded significant negative aspects of your service outweigh the positive 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,

7/21/2024

