



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

██████████
Docket No. 6724-24
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 6 September 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).

You enlisted in the Marine Corps and commenced a period of active duty on 14 July 1980. On 16 November 1981, you received non-judicial punishment (NJP) for disrespect to a Sergeant. On 9 June 1982, you were convicted at a special court martial (SPCM) for willfully disobeying a superior commissioned officer, disrespect toward a superior commissioned officer, insubordinate conduct towards a warrant officer, noncommissioned officer, or petty officer, and failure to obey a lawful order. On 5 October 1982, you received your second NJP for willfully disobeying an order of an NCO, use of a controlled substance, and violation of an order. On 9 December 1982, you were convicted at summary court martial (SCM) for disobeying a lawful order, violating a general order, damaging government property, and wrongfully using marijuana. A medical evaluation, dated 21 December 1982, notes you received a DUI, and tested positive for marijuana use on two other occasions while on active service.

Consequently, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to drug abuse. You waived your right to consult with counsel and a

hearing of your case before an administrative discharge board. Your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service due to your drug related misconduct. The separation authority approved the recommendation and, on 2 February 1983, 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 upgrade your discharge characterization of service and contentions that you were young, laws regarding marijuana have changed, and there may have been a problem with your drug test. For purposes of clemency and equity consideration, the Board noted you provided two 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, SPCM, and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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. Finally, the Board noted you provided no evidence, other than your statement, to support your contention that your positive urinalyses were somehow invalid. Therefore, the Board determined the presumption of regularity applies in your case. 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.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character, 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,

9/26/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]