



**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. 6813-24  
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 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, 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 began a period of active duty on 5 August 1997. On 23 February 1998, you received nonjudicial punishment (NJP) for a period of unauthorized absence from your appointed place of duty. On 2 June 1998, you were counseled concerning UA from medical appointment and failure to notify your supervisor. You were advised that failure to take corrective action could result in administrative separation. On 12 August 1998, you were counseled concerning a period of UA from appointed place of duty. You were advised that failure to make corrective action could result in administrative separation. On 18 September 1998, you received a second NJP for two periods of UA. On 2 February 1999, you were counseled concerning disobeying a direct order from a noncommissioned officer and being disrespectful. You were advised that failure to take corrective action could result in administrative separation. On 3 February 1999, you received a third NJP for insubordinate conduct, and failure to obey an order. On 28 January 2000, you were counseled concerning illegal drug involvement by evidence of your own admission. You were advised that failure to

take corrective action could result in administrative separation. On 31 January 2000, you received a fourth NJP for wrongful use of a controlled substance. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. On 18 February 2000, you were evaluated by a substance abuse counselor who determined that you met the DSM IV criteria for cannabis abuse. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse and your administrative separation proceedings were determined to be sufficient in law and fact. Ultimately, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 12 May 2000, 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 for a discharge upgrade and contentions that: (a) during the time serving your country, you faced numerous challenges and obstacles, (b) you were quite young and inexperienced, which added to the difficulties you encountered, (c) you made a mistake by using marijuana for medical purposes to alleviate the pain caused by your injury, (d) you received three significant letters of appreciation from your chain of command during your tenure, (e) you consistently demonstrated a strong dedication to upholding core values, (f) you were honored to be awarded the Navy Commendation Medal for your meritorious service during deployment, (g) you are seeking an upgrade with the intent to access your full benefits through the Department of Veterans Affairs and received the necessary healthcare. For purposes of clemency consideration, the Board noted you submitted two character letters of support that describe post-discharge good character.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. The Board was not persuaded by your contention that this was a one-time mistake in judgment based on your extensive history of misconduct that involved incidents of insubordination and general disregard of military authority and regulations. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 rehabilitation, 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 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 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,

8/13/2024

