



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. 7785-24
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 reconsideration application on 15 November 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 7 September 1995. As part of your enlistment application you disclosed pre-service marijuana use and, on 15 April 1995, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination on, 18 April 1995, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 7 May 1998, your command issued you a “Page 11” retention warning (Page 11) documenting your driving on a state suspended license. The Page 11 advised you a failure to take corrective action may result in administrative or judicial action. You elected not to submit a Page 11 rebuttal statement.

On 17 July 1998, your command documented on a Page 11 entry your referral to the Command Substance Abuse Counseling Center due to an alcohol-related incident occurring on 28 March 1998. The Page 11 directed you to inform your command of the results of your upcoming civilian court date on 12 August 1998.

On 6 August 1998, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana) on or about 20 May 1998. You did not appeal your NJP.

On 25 August 1998, your command documented on a Page 11 entry your civilian conviction on 12 August 1998 for a DUI offense. The Page 11 also informed you that you were going to be processed for an administrative separation for your drug-related offense that resulted in your recent NJP.

On 25 August 1998, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived in writing your right to request a hearing before an administrative separation board.

On 14 October 1998, the Staff Judge Advocate to the Separation Authority (SA) determined that your separation proceedings were legally and factually sufficient. The SA subsequently approved and directed your separation for misconduct. Ultimately, on 23 October 1998, you were separated from the Marine Corps for misconduct with an Other Than Honorable (OTH) discharge characterization and were assigned an RE-4 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) your current designation does not align with the entirety of your service and does not reflect your commitment and contributions, and (b) this correction is essential for your future prospects and to uphold the integrity of your service record. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

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 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 drug-related 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.

Additionally, 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 determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct and blatant disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

11/29/2024

