



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. 7992-24

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 30 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 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).

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 Marine Corps and began a period of active duty on 26 June 1980. Upon your enlistment, you receive a commander's moral waiver. On 15 October 1980, you were evaluated by a medical officer and diagnosed with Patella Femoral Dysfunction. On 24 December 1980, you received nonjudicial punishment (NJP) for possession of a controlled substance-marijuana. On 3 March 1981, you were evaluated by a medical officer as a result of knee related problems. Consequently, you were diagnosed with Right Knee-Pain Etiology Unknown. On 20 April 1981, you received a second NJP for violation of a lawful order by transporting alcoholic beverages into

the barracks. On 21 July 1981, you began a period of unauthorized absence (UA) which lasted ten days and resulted in your third NJP on 24 August 1981.

On 8 August 1981, you began a second period of UA which lasted one day and resulted in your fourth NJP on 14 September 1981. On 6 November 1981, you received a fifth NJP for two instances of failure to obey a lawful order from a commissioned officer to report to urinalysis. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement. You decided to waive your procedural rights and your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. After your administrative separation proceedings were determined to be sufficient in fact, the separation authority approved the recommendation. On 23 December 1981, 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) you were young and motivated to be the best Marine you could be, (b) you came from a long line of family members who served proudly, (c) you felt a pop in your knee during basic training and did not want to give up with graduation around the corner, (d) you reinjured your knee and were sent to a military hospital for medical care and possible surgery, (e) you just wanted to get the appropriate treatment for your knee and move forward, (f) you did not want to be medically discharged and were told you cannot longer be a Marine with your limitations. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and a character letter of support.

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 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 is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Finally, the Board considered the likely negative impact it had on the good order and discipline of your unit. The Board was not persuaded by your contentions that your misconduct should be mitigated by your knee condition and agreed with the assessment made at the time that you demonstrated an inability to respond to the command's attempts to rehabilitate your conduct deficiencies.

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, 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,

10/23/2024

