



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

█
Docket No. 8015-24
Ref: Signature Date

█
█
█

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 30 October 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 entered active duty with the Marine Corps on 28 September 1981. On 25 March 1983, you received non-judicial punishment (NJP) for wrongful possession and use of marijuana. On 22 November 1983, you received NJP for two specifications of disobeying a lawful order. On 6 August 1984, you received NJP for unauthorized absence (UA) totaling two days. On 27 August 1984, a summary court martial (SCM) convicted you of wrongful possession of nunchakus. On 16 January 1985, you received an additional NJP for wrongful use of marijuana. Consequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse.

After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation, and, on 7 March 1985, you were discharged for drug abuse.

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 and contentions that you served honorably for three years and six months and you are in need of medical treatment and assistance from the Department of Veteran Affairs (VA). You also contend that you were treated unfairly, your Colonel was out to get you, your childhood was abusive and cruel, and the Marine Corps failed to help you overcome your marijuana and alcohol problem. For purposes of clemency and equity consideration, the Board noted you provided character letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJPs and SCMs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved several 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 also considered the likely negative impact your conduct had on the good order and discipline of your command. 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. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions of being treated unfairly, having an abusive childhood, and having a drug and alcohol problem. Rather, the Board observed that you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct, which ultimately led to your discharge.

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 documentation 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 mitigated 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,

11/20/2024

