



**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. 8316-24  
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 25 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 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 active duty on 10 March 1987. On 10 February 1989, you were convicted at Summary Court-Martial (SCM), of violation of Article 112a – drug abuse, of the Uniform Code of Military Justice (UCMJ). You were sentenced to reduction to paygrade E2, forfeiture of \$517 per month for one month, and restriction for 60 days. On 3 January 1990, you received NJP for unauthorized absence (UA) from 2200 to 2300 on 16 March 1990. Thereafter, on 14 March 1990, you tested positive via urinalysis for marijuana. On 20 March 1990, you again received NJP for UA from 2200 to 2300, on 16 March 1990.

On 30 April 1990, you were again charged with violation of Article 112a, on this occasion at Special Court-Martial (SPCM). Consequently, on 2 May 1990, you requested discharge under Other Than Honorable Conditions (OTH) to avoid trial by SPCM. After appropriate review, you were discharged in accordance with your request on 27 June 1990.

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 change your discharge characterization of service, narrative reason for separation, and separation and reentry codes. You contend that the Navy erred in procedure and discretion by pursuing discharge rather than providing you the opportunity for rehabilitation or alternate solutions. You also contend you were a leader and role model for your siblings before enlisting and, since your discharge, have continued to be a role model for your children and community. You further contend you fell in with the wrong crowd after enlisting and became involved in drugs through those connections. You believe you were showing improvements in managing your drug use without proper treatment and had stopped using methamphetamines and was only using marijuana at the time of your discharge. You believe you would have seen even greater success with proper support, treatment, and rehabilitation. Lastly, you contend, by not pursuing any of these alternatives before initiating court-martial, the Navy erred in procedure and discretion. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your legal brief with enclosures.

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 SCM, NJPs, and request for discharge to avoid a second trial, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct; which ultimately led to your unfavorable separation. In addition, the Board found problematic the fact your misconduct involved a drug 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 noted the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, particularly as a second drug offense, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Thus, the Board determined you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a second court-martial conviction and possible punitive discharge. Finally, the Board was not persuaded by your argument that the Navy erred in processing your misconduct. As noted above, by your own admission, you continued to abuse drugs after your first SCM. Therefore, the Board determined your conduct showed a complete disregard for military authority and regulations. Accordingly, the Board found no error with your commanding officer's decision to prefer your case to a second court-martial or process you for administrative separation based on your request to avoid a trial by court-martial. The Board determined your commanding officer's exercise of authority in your case was appropriate and within his discretion.

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

