



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

██████████
Docket No. 8405-24
Ref: Signature Date

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Dear ██████████

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 27 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 on 12 January 1983. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delay Entry Program. You also were granted waivers for driving while intoxicated and drunk in public.

On 9 May 1983, you received non-judicial punishment (NJP), for disorderly conduct in the barracks. On 1 October 1984, you received your second NJP for driving under the influence of alcohol and violation of a written order. You received your third NJP, on 21 June 1985, for wrongful use of marijuana. On 12 August 1985, you received your fourth NJP for being absenting yourself from signing your restriction papers at the prescribed time. Consequently, you

were notified of administrative separation processing for minor disciplinary infractions and drug abuse. You elected your right to consult with counsel but waived your right to an administrative board. The Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation, and you were so discharged on 3 October 1985.

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 contention that as a young man you made mistakes, your time in the military taught you discipline and structure, and you used those traits throughout your life. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, which consisted of a copy of your DD Form 214 and a Department of Veterans Affairs Claimant Representative form.

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 offense. The Board determined that illegal drug use and possession 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. Further, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command.

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. 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. 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,

12/19/2024

