



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. 8622-24
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 7 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 6 February 1981. Upon your enlistment, you received a waiver for minor traffic violations and admitted preservice use of marijuana. On 22 April 1981, you received nonjudicial punishment (NJP) for willful disobedience of a lawful order by smoking marijuana. On 17 September 1981, you attended the Drug and Alcohol Orientation (I & II). On 28 February 1983, you were counseled concerning your failure to prepare for the weekly platoon personnel inspection. On 21 March 1983, you received a second NJP for willfully disobeyed an order from a noncommissioned officer to wash

your uniform and gear. Between 24 January 1984 and 2 November 1984, you were counseled concerning frequent infractions of the UCMJ and traffic violations aboard Marine Corps Base Camp Pendleton. You were advised that failure to take corrective action could result in administrative separation. On 15 November 1984, you received a third NJP for wrongful use of a controlled substance-marijuana. On 20 December 1984, you were evaluated by a medical officer and diagnosed as non-dependent on drugs and alcohol.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you requested a case hearing by an Administrative Discharge Board (ADB). Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason misconduct due to drug abuse. On 8 January 1985, the ADB voted (3) to (0) that you committed misconduct due to drug abuse and recommended that you were administratively separated from service with an OTH characterization of service. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved the ADB recommendation, and you were so discharged on 5 February 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 contentions that: (a) this correction should be made as the drug abuse or misconduct does not reflect your good moral character, (b) you do not recall using cannabis and was a surprised with a positive urinalysis, (c) being around others that smoke cannabis can result in positive urinalysis, (d) you served faithfully and honorably through your end of obligated active service (EAOS) and was not asked to leave the Marine Corps following the accusations. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 a 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you entered the Marine Corps with a history of drug abuse and were found guilty of two separate drug offenses more than three years apart. Therefore, the Board was not persuaded by your argument of innocent ingestion and disagreed with your contentions that your service was Honorable and ended at your EAS.

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 empathizes with your current medical condition, 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 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,

10/15/2024

