



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. 8793-24

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 18 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, 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 with a moral waiver and began a period of active duty on 12 July 1996. On 15 January 1998, you tested positive for use of a controlled substance-marijuana. On 5 February 1998, you were convicted by summary court martial (SCM) for losing one 9mm pistol, the property of the U.S. government, and wrongful use of a controlled substance-marijuana. You were found guilty and sentenced to reduction in rank, forfeiture of pay, and confinement. On 10 March 1998, you were evaluated by a medical officer and diagnosed with drug abuse. On 12 May 1998, you were notified of the imitiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) and your administrative separation proceedings were determined to be sufficient in law and fact. Ultimately, the separation authority approved the recommendation, and you were so discharged on 23 June 1998.

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 did not realize you were charged for loss of U.S. government property due to your emotional state, (b) you were an exceptional Marine that made very poor decisions due to your mental stress and depression, (c) the only charge you knew you were guilty of was wrongful use of marijuana, which was a poor choice to manage severe back pain for an injury, (d) you were suffering from extreme depression as a result of your injury, a divorce from your first spouse, and your father fighting for his life due to encephalitis. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you submitted a character letter of support and a background check report.

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 SCM conviction, 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. Lastly, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board relied on the presumption of regularity in concluding there was no error with your loss of government property charge. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. After reviewing your evidence, they determined it was insufficient to overcome the presumption in your case.

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 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 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,

12/12/2024

