



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

Docket No. 9520-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

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 20 December 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).

You enlisted in the U.S. Marine Corps Reserve (USMCR) on 21 November 2016. On 20 November 2016, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs," as part of your enlistment application. You began a period of active duty service on 5 June 2017 and were honorably discharged at the completion of your initial recruit training on 11 October 2017. Upon your discharge, you were initially assigned to a drilling USMCR unit located in [REDACTED].

On 22 March 2018, your command issued you a "Page 11" counseling entry (Page 11) concerning your voluntary withdrawal from training as part of the Reconnaissance Incremental Initial Active Duty Training (IIADT) Program. You expressly acknowledged forfeiting any

chance of receiving the Reconnaissance MOS or any incentive pays associated with being a Reconnaissance Marine. On 22 February 2019, your command issued you a Page 11 warning for failing to obey a lawful general order or regulation by consuming alcohol underage at the Marine Corps Birthday Ball.

On 3 February 2020, a Navy Drug Screening Laboratory notified your command that you tested positive for marijuana (THC) at a level of 107 ng/ml, well above the DoD testing cutoff level of 15 ng/ml. On 4 February 2020, a medical representative screened your medical record and confirmed that you did not have a prescription that could have caused a positive urinalysis test result.

On 5 February 2020, your command issued you a Page 11 warning for your illegal drug involvement; specifically the usage of THC identified through urinalysis testing. You acknowledged and understood that you were being processed for an administrative separation, and that a failure to complete your enlistment contract with an Honorable characterization of service may preclude your eligibility for benefits from the Department of Veterans Affairs or other organizations and have an adverse effect on future civilian employment. You elected not to submit a Page 11 rebuttal statement.

On the same day, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived in writing your rights to consult with counsel, submit statements, and to request an administrative separation board.

On 2 April 2020, the Staff Judge Advocate to the Separation Authority determined that your administrative discharge proceedings were legally and factually sufficient. Ultimately, on or about 3 April 2020, you were separated from the USMCR for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4B reentry code.

On 6 July 2022, the Naval Discharge Review Board (NDRB) granted your application and upgraded your discharge characterization to "General (Under Honorable Conditions)" (GEN). You had contended with the NDRB, in part, that your discharge was unjust because cannabidiol (aka CBD) was not banned at the time.

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 reason for separation and reentry code. You contend that: (a) you were unjustly separated from the Marine Corps at a time when CBD was not banned by the DoD, (b) you have lived a life that can be emulated by others since his separation, (c) the amount of THC in your system demonstrates a minimal level while you see momentum towards full legalization, (d) your punishment received was disproportional to that of other services, (e) you relied on your command for help and assistance, and were ignored until you were separated, (f) you took CBD oil that unbeknownst to you contained THC, and (g) you reviewed the bottle's ingredients, which did not state THC was used. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned narrative reason for separation and reentry code remain appropriate. The Board determined that illegal drug and CBD use is contrary to USMCR core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that CBD and/or marijuana use is still against Department of Defense regulations and their use in any form is still not permitted for recreational use while serving in the military. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board determined that any arguments regarding the legality of CBD products at the time you voluntarily consumed such products to be without merit. The Board noted that the Department of the Navy, on 7 August 2019, banned the ingestion and/or use of such products (5) months prior to your urinalysis test administered on 10 January 2020. ALNAV 057/19, dated 7 August 2019, prohibited the use of any and all hemp products by Sailors and Marines. ALNAV 057/19 provided, in part:

...new hemp products are commercially available in the United States, the normal use of which could cause a positive urinalysis result. The United States Food and Drug Administration (FDA) does not determine or certify the THC concentration of commercially available hemp products, such as cannabidiol (also known as CBD). Accordingly, these products may contain appreciable levels of THC, yet omit any reference to THC on the product label and/or list an inaccurate THC concentration. Consequently, Sailors and Marines CANNOT RELY on the packaging and labeling of hemp products in determining whether the product contains THC concentrations that could cause a positive urinalysis result.

Substance abuse by members of the Armed Forces is incompatible with military standards of good order and discipline, performance, and operational readiness. It is the goal of the Department of the Navy to eliminate substance abuse. The use of products containing or derived from hemp, may interfere with the Navy and Marine Corps Drug Testing Program and result in the reporting of unlawful THC levels in Sailors and Marines. In order to ensure military readiness and the reliability and integrity of the Drug Testing Program, the knowing ingestion (orally, intravenously, through smoking/vaporization, or through other means) of products containing, or products derived from, hemp is PROHIBITED. Failure by military personnel to comply with this All Navy Message (ALNAV) is a violation of the Uniform Code of Military Justice (UCMJ), Article 92, Failure to Obey a Lawful General Order, and any other UCMJ article that may apply. Violations may result in administrative and/or disciplinary action.

EFFECTIVE IMMEDIATELY: Sailors and Marines are PROHIBITED from knowingly using products made or derived from hemp (as defined in 7 U.S.C. 1639o), including cannabidiol (CBD), regardless of the products THC concentration, claimed or actual, and regardless of whether such product may lawfully be bought, sold, and used under the law applicable to civilians.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and disregard for good order and discipline clearly merited your discharge and the assignment of your restrictive reentry code. While the Board carefully considered the evidence you submitted in mitigation, 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 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,

1/13/2025

