



Docket No. 9581-24

Ref: Signature Date

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 16 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, 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 with a waiver and began a period of active duty on 24 July 1979. On 4 February 1980, you began a period of unauthorized absence (UA) which lasted 134 days and resulted in your conviction by special court martial (SPCM) on 2 October 1980. You were sentenced to forfeiture of pay for a period of six months. On 28 January 1981, you began a second period of UA which lasted 13 days. On 20 March 1981, you received nonjudicial punishment (NJP) for willfully disobeyed a lawful order. On 22 February 1983, you received NJP for possessing a smoking device and plastic bag with trace amounts of marijuana. On

24 February 1983, you were counseled concerning frequent involvement and conduct not in accordance with Marine Corps standards. You were advised that failure to take corrective action could result in administrative separation.

On 16 June 1983, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct; at which point, you decided to waive your procedural rights. Subsequently, your commanding officer recommended a General (Under Honorable Conditions) discharge characterization of service by reason of misconduct due to pattern of misconduct. However, after your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority ordered an Other Than Honorable (OTH) discharge characterization. On 12 July 1983, you were so discharged.

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 received letters of recommendation from your commanding officer and platoon commander, and (b) you were not offered a board of review at the time of your discharge. 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 and SPCM, 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. Additionally, the Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct; which led to your OTH discharge. Finally, contrary to your contention, the Board found evidence in your record that you waived your right to request a hearing before an administrative discharge board on 16 June 1983.

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 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,

1/17/2025

