



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

██████████
Docket No. 11903-24
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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps with approved waivers, for pre-service history of marijuana use and misdemeanor offense for petty theft and began a period of active duty on 20 September 2004. In February 2005, you were issued administrative counseling advising you to correct conduct deficiencies related to your willfully disobeying a lawful order from a commissioned officer and warning you that further misconduct could result in administrative separation under adverse circumstances. On 28 October 2005, you accepted nonjudicial punishment (NJP) for two violations of the Uniform Code of Military Justice (UCMJ) under Article 92 for failure to

obey an order or regulation by having unauthorized beverages in your wall locker and due to underage drinking.

On 29 September 2006, you were administratively counseled for illegal drug involvement. In October 2006, the results of urinalysis screening reported your test positive for both marijuana and cocaine use. You elected to enter into a pre-trial agreement in which you would plead guilty before Summary Court-Martial (SCM) to two specifications of violation of Article 112a of the UCMJ and waive your right to a hearing before an administrative separation board in return for removal of the charges from a Special Court-Martial forum. On 18 January 2007, a SCM found you guilty of the two specifications of drug abuse. Consistent with your pre-trial agreement, on 22 January 2007, you waived your hearing before an administrative separation board incident to your notification of processing for the separation by reason of misconduct due to drug abuse. A recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded for final decision. On 13 March 2007, your discharge was approved by Commanding General, 2d Marine Aircraft Wing and you were so discharged on 22 March 2007.

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 upgrade your discharge and your contentions that your conduct was neither willful nor persistent and you believe that recent changes to discharge review policies warrants consideration of an upgraded characterization. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. Additionally, for the purpose of clemency and equity consideration, the Board noted you did not provide 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board observed that you provided no evidence, other than your application, to support your request for relief.

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 is attached 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,

1/20/2025

