



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

Docket No. 1998-25
Ref: Signature Date

Dear Petitioner:

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 17 June 2025. 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 Marine Corps and began a period of active duty on 5 September 1968. You participated in combat operations in [REDACTED] from 25 March 1969 to 13 August 1969. On 10 June 1970, you received non-judicial punishment (NJP) for absence from your appointed place of duty. On 2 July 1970, you received your second NJP for failure to be at your appointed place of duty. On 23 July 1970, you received your third NJP for absence from your appointed place of duty. On 28 September 1970, you pleaded guilty in [REDACTED], [REDACTED] criminal court to assault and battery.

On 1 October 1970, you presented yourself to special agents of the criminal investigative division. You provided a voluntary statement admitting to your use and possession of marijuana. Subsequently, you were notified that you were being recommended for an undesirable (Under Other Than Honorable (OTH) conditions) administrative discharge from the Marine Corps by reason of unfitness based on your admitted use of marijuana and frequent involvement of a discreditable nature with civilian and military authorities. You waived your right to consult with counsel and present your case to an administrative discharge board. The commanding officer

(CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner's] behavior is a discredit to himself and to the Marine Corps. During the last few months, [Petitioner's] behavior has steadily deteriorated, and he is now awaiting disciplinary action on several charges.

It is felt that [Petitioner's] actions will prevent him from serving in a satisfactory manner, and that he will continue to be a disruptive influence on other Marines of this Company for this reason, it is recommended that [Petitioner] be separated from the service with an undesirable (Other Than Honorable) discharge.

The separation authority approved the recommendation and you were so discharged on 18 December 1970.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 31 January 1980, based on their determination that your discharge was proper as issued.

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 character of service and your contention that you served in ■■■■■, received a combat action ribbon, were exposed to Agent Orange, and have been diagnosed with diabetes. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and health care documentation.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian conviction and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your unit. The Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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 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,

7/3/2025

