



Docket No. 8560-25  
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 20 March 2026. 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Marine Corps and began active duty on 18 March 1970.
2. On 19 December 1970, you received non-judicial punishment (NJP) for the assault on a [REDACTED]
3. On 27 May 1971, you received your second NJP for three specifications of unauthorized absence (UA), mutiny, and failure to obey a lawful order.

4. On 14 June 1971, you received your third NJP for a 40-minute period of UA.

5. On 6 August 1971, you were placed in confinement pending a court-martial. On 10 August 1971, charges against you were preferred to a special court-martial for failure to go to your appointed place of duty, two specifications of possession of marijuana, and one specification of possession of heroin.

6. On 18 August 1971, you submitted a request to be discharged for the good of the service in lieu of trial by court-martial. In your request, you acknowledged you may receive an undesirable (OTH) characterization of service and admitted to your misconduct.

7. Your request was approved and you were discharged with an OTH on 28 October 1971.

8. Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 10 December 1976, based on their determination that your discharge was proper as issued.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

1. You were unjustly threatened with a court-martial board.

2. The accusations that you were caught with marijuana when at no time were you caught with marijuana on your person. It was found upstairs in the barracks but you lived downstairs.

3. The Staff Sergeant that apprehended you was harassing you constantly for any little thing. It was his intention to destroy your life no matter what he had to do.

4. You only agreed to the discharge because you were told it would be a General Discharge.

5. You were a very young man and did not know how to get your discharge upgraded before coming into contact with veteran service officers and veteran case managers.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct and request to be discharged for the good of the service. The Board noted you admitted to committing the misconduct that formed the basis of your administrative separation and OTH discharge. While the Board considered your contention that drugs were not found in your possession and you only agreed to the good of the service discharge because you were told you would receive a General (Under Honorable Conditions) characterization of service, the Board was not persuaded. The Board found no evidence, other than your statement, to substantiate your contentions. Further, the Board noted that physical possession of narcotics is not dispositive of the offense with which you were charged. Finally, the Board considered that your request to be discharge explicitly states you acknowledged you may receive an OTH characterization of service and that you admit to committing the offenses

charged. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service, your relative youth and immaturity at the time of your misconduct, your advanced age, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board determined that illegal drug possession 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 found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities 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 command. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. Additionally, the Board also considered that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board was not persuaded by your implied argument that a Staff Sergeant was responsible for your misconduct based on his attempts to harass you or that you only requested to be separated based on a promise of a higher discharge characterization. Based on your contentions, the Board concluded you have yet to accept responsibility for your overall poor conduct, that included significantly more than drug possession, and have shown no remorse for your actions. Thus, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

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,

4/3/2026

