



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

Docket No. 8665-25
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 13 February 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 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 originally enlisted in the U.S. Marine Corps and began a period of active duty service on 28 August 1975. Your pre-enlistment physical examination, on 23 October 1974, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.
2. On 26 October 1976, you received non-judicial punishment (NJP) for dereliction of duty when you allowed beer to be introduced into a guard area at the W-2 range for consumption. You did not appeal your NJP.
3. On 29 October 1976, you received NJP for violating a lawful general regulation by having marijuana in your possession. You did not appeal your NJP.
4. On 4 February 1977, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) in lieu of a trial by court-martial for two (2) separate specifications of violating a lawful general regulation by having marijuana in

your possession. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged your guilt as to the offenses underlying your request, and you acknowledged that if your request was approved that your discharge characterization will be an OTH. As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple offenses, as well as the potential sentence of confinement and the negative ramifications of likely receiving a punitive discharge.

5. On 10 February 1977 your commanding officer (CO) recommended to the Separation Authority (SA) that your request should be approved. In his recommendation, the CO stated, in pertinent part:

During the past four months he has shown a disregard for the UCMJ resulting in multiple charges/violations. His attitude is not conducive to good order and discipline within this command with all counseling/leadership efforts producing negative results...Predicated upon his diminishing value to the Marine Corps and his pending charges, discharge in lieu of trial would be in the best interest of all concerned.

6. On 18 February 1977, the Staff Judge Advocate to the SA determined that your separation proceedings were legally and factually sufficient. The SA subsequently approved your discharge request and directed an OTH discharge characterization. Ultimately, on 23 March 1977, you were separated from the Marine Corps with an OTH discharge characterization and assigned an RE-4 reentry code.

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. While the Board carefully considered your contention that your initial NJP was contrived, the Board noted you did not deny committing the drug related misconduct. Further, you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and no error exists with your OTH characterization of service.

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 contentions, the totality of your service, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, your service to your community, your advanced age, the character references you provided for review, 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 drug use and/or possession is contrary to military core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.50 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your drug-related misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your cumulative misconduct and further justified your OTH characterization. Additionally, the Board found that your conduct 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 command.

Finally, the Board also noted 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. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. While the Board commends you for your post-service rehabilitation and accomplishments, ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your cumulative 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,

2/22/2026

