



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

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Docket No: 4809-21
Ref: Signature Date

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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 4 October 2021. 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).

On 27 April 1987, during your enlistment processing, you answered "yes" to having used marijuana in the past on NAVCRUIT Form 1133. An enlistment waiver was not required.

You enlisted in the U.S. Navy and began a period of active duty on 1 July 1987. On 2 July 1987, you were briefed on the Navy's drug and alcohol abuse policy. You reported on board USS █ on 21 September 1989. On 25 October 1989, you attended indoctrination. Many topics were covered to include substance abuse. On 4 October 1990, as a result of your positive urinalysis for cocaine, a medical officer's evaluation documented you were not physically or psychologically dependent on drugs. Additionally, a preliminary counseling and assistance center (CAAC) screening letter documented you did not appear to be dependent on cocaine and recommended you be administratively discharged. The letter also recommended you be placed on a command urinalysis surveillance program until said discharged. On 5 October 1990, you received non-judicial punishment (NJP) for wrongful use of cocaine. You were subsequently

notified of your pending administrative separation due to drug abuse, at which time, you waived your right to counsel and to an administrative discharge board. Further, you were notified of the commanding officer's (CO) intent to recommend to the separation authority that you be discharged with an other than honorable (OTH) characterization of service. In November 1990, the separation authority agreed with your CO and directed your discharge by reason of misconduct for drug abuse. On 20 November 1994, you declined post service treatment via the veterans administration. On 4 December 1990, you were discharged with an OTH. On 7 October 1994, your case was heard by the naval discharge review board (NDRB). While you did not submit specific decisional issues or contentions, you did request NDRB review the propriety and equity of your discharge. NDRB found no relief was warranted.

You contend there was no evidence which proves willful and persistent misconduct did occur, a pattern of drug abuse was never established or proven, and that you were never given the opportunity to disprove the charge brought against you. Lastly, you contend your Navy career suffered the "death penalty" for an offense that is considered minor. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations.

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 contentions noted above, and desire to upgrade your discharge. Additionally, aside from your VA documents and DD Form 214, the Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your drug use, outweighed these mitigating factors. 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,

10/4/2021

[REDACTED]

Executive Director

[REDACTED]