



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

█  
Docket No: 6362-21  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 1 November 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 January 2004, during your enlistment processing, you answered "yes" to having experimentally/casually using marijuana on NAVCRUIT Form 1133/65. You also answered "yes" to drug use and abuse; admitting to having smoked marijuana four times on DD Form 1866/2. You required and were granted an enlistment waiver on 28 January 2004.

You enlisted in the U.S. Navy (USN) and began a period of active duty on 5 May 2004. On 28 July 2004, you received nonjudicial punishment (NJP) for failure to obey other lawful order. On this date you also received a counseling warning that acknowledged this deficiency, documenting your NJP was for "two" specifications of failure to obey other lawful order vice "one" as listed on Court Memorandum NAVPERS 1070/607. This counseling warning further stated, in spite of your misconduct you were being retained in the USN, but advised you that further misconduct may result in disciplinary action or administrative separation. On 8 November 2005, you received a second NJP for failure to obey order/regulation. Your enlisted evaluation covering the period of 10 June 2005 through 15 July 2006, also documented that an

NJP awarded on 2 November 2005 was for an alcohol related incident and that a positive urinalysis was reported on 12 July 2006. Additionally, you were not recommended for retention. You signed this evaluation on 26 July 2006, selecting the option, "did not intend to submit a statement." On 21 August 2006, as a result of your drug use, you were discharged with an other than honorable (OTH) characterization of service.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officials and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 21 August 2006 with an OTH characterization of service, your narrative reason for separation is "Misconduct (Drug Abuse)," your separation code is "HKK," and your reenlistment code is "RE-4."

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. The Board also considered your contention that your discharge was unjust because you were stripped of your GI Bill, honor, and benefits as a result of an accusation of a positive urinalysis you allegedly requested to review but were not provided. You further contend, apart from drug abuse as the narrative reason for your discharge and according to the Department of Veteran's Affairs, there are no negative remarks in your record to include no record of your being charged with drug use or your having failed a drug test. 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. Additionally, 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 two NJPs, 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, \_\_\_\_\_

11/8/2021



Executive Director

Signed by: █