



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

■  
Docket No: 6473-21

Ref: Signature Date



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 17 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 USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018.

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.

You enlisted in the navy and began a period of active duty service on 14 September 1978. You subsequently completed this enlistment with an honorable characterization of service on 7 October 1982, and reenlisted on 8 October 1982.

On 18 May 1984, you were convicted by a special court-martial (SPCM) of wrongful use and possession of marijuana, and two specifications of wrongful distribution of marijuana. Your sentence included confinement (two months), forfeiture of pay (\$397 for two months), reduction

in rank (E-1), and a bad conduct discharge (BCD). On 15 June 1984, the convening authority approved the sentence and suspended the BCD for a period of six months, from the date of the trial, at which time, unless the suspension is sooner vacated.

On 14 June 1984, your commanding officer (CO) notified you that he was recommending you for administrative discharge by reason of misconduct due to the wrongful use of marijuana and possession. You elected your procedural rights, to include, your right to consult with counsel and to present your case before an administrative discharge board (ADB).

On 22 June 1984, an ADB was convened and by a vote of 3 to 0, found that you committed misconduct due to drug abuse, and recommended administrative discharge from the navy "under less than honorable conditions" characterization of service. The ADB also recommended that your separation be suspended for a maximum period of twelve months.

On 29 June 1984, your CO recommended an administratively discharged from the navy for misconduct due to drug abuse as evidenced by record of trial – SPCM.

On 19 July 1984, the separation authority directed the CO's recommendation for administrative separation be held in abeyance and the ADB be reconvened to make findings based on the specific reason for separation and correct the recommendation for the discharge characterization of service. The separation authority noted that a "less than honorable discharge" is not a valid type of discharge characterization of service.

On 25 July 1984, the ADB reconvened and unanimously found you committed misconduct due to wrongful use of marijuana, possession, with intent to deliver marijuana and recommended administrative separation from the navy with an other than honorable (OTH) characterization of service. The ADB further recommended that the OTH discharge be suspended for a period of not less than twelve months.

On 31 August 1984, the Chief of Naval Personnel (CNP) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) you be discharged from the navy under OTH conditions by reason of misconduct due to drug abuse, as evidenced by his SPCM conviction. Subsequently, ASN (M&RA) approved CNP's recommendation.

On 10 September 1984, the separation authority directed your discharge from the navy under OTH conditions for misconduct (Trafficking). As such, you were discharged from the navy on 2 October 1984 under OTH conditions for misconduct due to drug abuse (Trafficking).

You provided the following contention for the Boards consideration: Your first wife was involved in unacceptable conduct that led to the circumstances of your discharge; you were not strong enough at the time to rein in her worst impulses; and you loved your time in the navy and you are profoundly disappointed in your behavior during this time. Additionally, you provided the following assertions for the Boards consideration: The circumstances of your discharge was unfortunate and not at all reflective of the person you were nor the person you have grown to become; you are embarrassed by the circumstances and wish this change for your own personal sense of accomplishment; you recently achieved your Associate's Degree and will continue

towards your Bachelor's Degree; you are a father of a beautiful nine year old girl and happily married to your wife of 12 years; you would like a DD Form 214 to accurately reflect who you have been for the last 35 years; you feel that you have paid a price by being discharged; and you would be humbled and honored if this stain on your record can be changed.

After careful review and consideration of all of the evidence of record, the Board found insufficient evidence of any error or injustice warranting a change to your naval record. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with USECDEF Memo of 25 Jul 2018 (Wilkie memo). These included, but were not limited to, your desire to upgrade your discharge characterization of service and your contentions and assertions as previously discussed. The Board noted that you did not submit any supporting documentation or advocacy letters in support of your application to be considered for clemency consideration. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct as evidenced by your SPCM conviction, which involved the wrongful use, possession, and distribution of a controlled substance was so significant that it far outweighed all of the potentially mitigating factors. Accordingly, the Board determined that your OTH characterization of service was appropriately awarded, and that the totality of the circumstances do not warrant an upgrade.

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.

2/9/2022

