



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: 6499-21
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 17 November July 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).

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 on 5 January 1990. On 31 July 1990, you received non-judicial punishment (NJP) for three specifications of unauthorized absence totaling 40 days, disobeying a lawful order and wrongful use of marijuana.

On 1 August 1990, you were notified that you were being recommended for administrative discharge from the Navy. The notification advised that if separation was approved, the least favorable description of service authorized in your case would be under other than honorable (OTH) conditions. You were advised of, and waived, your procedural rights, including your

right to consult with and be represented by military counsel, and your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge by reason of misconduct due to commission of a serious offense. On 29 August 1990, you were so discharged.

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 character of service. The Board also considered contentions that you were given a discharge agreement at Captain's Mast, you signed papers stating that you were to receive an OTH discharge that would turn into a general discharge in six months, but after all of these years you found out that you were put in for a dishonorable discharge. The Board noted you did not submit any 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 an NJP involving an extended period of unauthorized absence and wrongful use of a controlled substance, outweighed these mitigating factors. About your contention, there is no evidence in the record and you provided none to support your contention. Additionally, be advised there is no provision of law or in Navy regulations that allows for recharacterization of service due solely to the passage of time. 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,

12/7/2021

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Executive Director
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