



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: 6690-21
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 13 December 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 this 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, 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 U.S. Navy Reserve, and began a period of active duty on 14 February 1989. On 14 June 1989, you received an honorable characterization of service discharge certificate DD 214, for completing a period of active duty with an RE-5 reentry code (USNR-R released after serving 90 or more days of Active Duty for Training (ADT). Returned to Reserve unit/activity without reenlistment eligibility being determined). On 16 February 1989, you were briefed on the Navy's drug and alcohol abuse policy.

On 6 July 1989, you were recalled to active duty and commenced a second period of active duty. You were counselled on 21 July 1989, concerning derogatory remarks you directed towards members of the opposite sex. On 2 February 1990, you received your first nonjudicial punishment (NJP) for three specifications of unauthorized absence (UA), failure to obey an order or regulation, and insubordinate conduct toward a warrant, noncommissioned officer, or petty officer. You were again counseling on 13 February 1990, retaining you in the Navy but documenting deficiencies in your performance and/or conduct and advising you that any further deficiencies will result in disciplinary action and in processing for administrative separation.

On 30 April 1992, your case was heard at a physical disability board (PEB) where you were deemed physically unfit and assigned a disability rating of 10 percent. The PEB further recommended you be separated with severance pay but without further disciplinary benefits. On 6 May 1992, you received a second NJP for wrongful use of marijuana. On 14 May 1992, as a result of your repeated misconduct, you were notified of pending administrative separation by reason of drug abuse, at which time, you consulted with counsel and elected a hearing at an administrative discharge board (ADB). The ADB was held on 8 June 1992. The board found that you did commit misconduct and, by a vote of 3 to 1, recommended you be discharged. Furthermore, by a vote of 2 to 1, the board recommended that you be separated with an other than honorable (OTH) characterization of service by reason of drug abuse. On 9 June 1992, correspondence from the counseling and assistance center (CAAC) found you were non-dependent on drugs. Furthermore, CAAC recommended you be administratively separated and offered treatment through a veterans affairs (VA) hospital. On 21 July 1992, you declined in-patient treatment for alcohol/drug dependency via a VA hospital. Your commanding officer (CO) concurred with the findings and recommendation of the ADB and recommended to the separation authority that you be discharged with an OTH due to your drug abuse. On 6 August 1992, you were again offered in-patient treatment for alcohol/drug dependency via a VA hospital for which you again declined. On 1 September 1992, the separation authority agreed with your CO and directed you be discharged with an OTH due to your drug use. You were discharged on 14 September 1992.

The Board carefully reviewed your application and 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 characterization of service based on your contentions that you were pending medical retirement for your hip and, due to racial discrimination, you were separated with an OTH. 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 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 and marijuana 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,

1/13/2022

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Executive Director

Signed by: █