

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

> Docket No: 6864-21 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 threemember panel of the Board, sitting in executive session, considered your application on 29 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 9 September 1987, during your enlistment processing, you answered "yes" to having used marijuana in the past on NAVCRUIT Form 1133. This form also documents a pre-service drug and alcohol interview was required and conducted. In February 1988, it was determined you were eligible to enlist.

You enlisted in the U.S. Navy and began a period of active duty on 4 February 1988. On 25 August 1989, you received your first nonjudicial punishment (NJP) for two (2) specifications of assault. Less than one month later, on 18 September 1989, you received a second NJP for four (4) specifications of failing to go to your appointed place of duty. On this date you also received a retention counseling/warning documenting deficiencies in your performance and/or conduct regarding your unauthorized absence but retaining you in the U.S. Navy (USN). This document further warned you that any further deficiencies in your performance and/or conduct will make you eligible for administrative separation action. On 23 October 1989, you received a third NJP

for two (2) specification of failing to go to your appointed place of duty, failing to obey a lawful order of your superior commissioned officer, and two (2) specifications of failing to obey a lawful order. On 17 April 1990, you received additional administrative remarks again retaining you in the USN but documenting you were counseled regarding driving while under the influence and again warning you that further discrepancies may result in disciplinary actions and in the processing for administrative separation. On 12 June 1990, as a result of your continued misconduct, you were found guilty at a summary court-martial (SCM) of six (6) specifications of failing to obey an order or regulation, wearing a faddish haircut, and driving a privately owned vehicle without a driver's license. You were sentenced to confinement for 10 days, to forfeit \$480.00 pay per month for one (1) month, and to be reduced to E-1.

On 22 June 1990, you were subsequently notified of your pending administrative separation due to pattern of misconduct (POM) and commission of a serious offense (COSO), at which time, you elected your right to an administrative discharge board, to submit matters on your own behalf, to obtain copies of documents that would be forwarded to the Chief of Naval Personnel (CNP), and you objected to being separated. On 17 July 1990, you submitted a new election of rights electing your right to consult with counsel, to again obtain copies of documents that would be forwarded to the Chief of Naval Personnel (CNP), and you objected to being separated. On 17 July 1990, you submitted a new election of rights electing your right to consult with counsel, to again obtain copies of documents that would be forwarded to CNP; however, you waived all of your other rights and no longer objected to being separated. 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. On 19 July 1990, the separation authority directed your discharge by reason of POM and on 3 August 1990, you were discharged with an OTH.

You contend you were very young and had little guidance when you enlisted. You add being away from home was difficult as you experienced culture shock since your only exposure to black and white races involved both races staying in "their areas." You admit to getting into trouble and having problems during your enlistment. 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. Additionally, the Board noted you did submit a statement and character letters for clemency consideration but you did not provide post-service documents for review. 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 NJPs and SCM, 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,

	12/23/2021
Executive Director	
Signed by:	