

DEPARTMENT OF THE NAVY

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

> Docket No: 7288-21 Ref: Signature Date

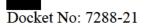
Dear Petitioner:

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 5 January 2022. 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 service on 6 March 1996. On 7 October 1997, you received non-judicial punishment (NJP) for two specifications of wrongful use of marijuana. The documents relating to your administrative discharge are not in your service record. However, in the absence of significant evidence to the contrary, the Board presumes that the action of public officers were in keeping with the laws and regulation sin place at the time of that action. On 29 October 1997, you were discharged with an other than honorable (OTH) character of service. Following your discharge, a drug and alcohol abuse reports notes you showed not potential for further service and you were discharged with an OTH.



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 character of service, and your contentions that: (a) you made a mistake by using marijuana to cope with being away from your family during your military service; (b) current state laws have changed to decriminalize and/or allow marijuana for medical use; and (c) you were an exemplary member of the Navy. The Board determined you failed to provide sufficient evidence to support adjustment to your character of service, such as evidence of positive post-service conduct to mitigate your drug related misconduct. Although certain states have decriminalized the use of marijuana, or legalized marijuana use for recreational, and/or medical purposes the US Military has not changed its policy on marijuana use. Your naval record was incomplete; therefore, the Board relied upon the presumption of regularity and presumed that the officials acted in accordance with governing law/policy and in good faith. The Board in its review discerned no impropriety or inequity in your discharge. 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,

1/21/2022
Executive Director