



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: 0604-22
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 23 February 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 U.S. Navy and began a period of active duty on 23 September 1977 which ended on 22 September 1981 with an honorable characterization of service. On 9 October 1981, you enlisted in the Navy Reserve for a period of two (2) years but were discharged one (1) month later on 8 November 1981, to enlist in the regular Navy. You reenlisted for a second period of active service on 9 November 1981. On 25 January 1983, you received your first nonjudicial punishment (NJP) during this enlistment for knowingly and wrongfully using marijuana. On 28 February 1983, a substance abuse report indicated that you were not drug or alcohol dependent. It further indicated you had a negative attitude towards your naval service and had no

intent to discontinue drug usage. On 10 March 1983, you requested NJP. At said NJP you refused to discontinue your drug use and expressed your desire to leave the Navy. You were notified of your commanding officer's (CO) intent to recommend to the discharge authority that you be discharged with an other than honorable (OTH) characterization of service for drug abuse. On 22 April 1983, the discharge authority agreed with your CO and directed you be discharged. You were so discharged on 29 April 1983.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

In your application you contend after reenlisting you took the E-5 promotion exam. You add that not long after taking the exam you received NJP for a positive urinalysis but state you were not using drugs. Further, you state you would like to be able to utilize Veteran's Administration benefits.

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 not submit post-service accomplishments or advocacy letters 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 NJP, 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 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,

3/7/2022

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Executive Director
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