



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

█
Docket No: 869-22
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 16 March 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 entered active duty with the Navy on 10 September 1991. On 8 September 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 24 days, wrongful use of marijuana, and disorderly conduct. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse, with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation, and on 23 April 1993, 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 in addition to your contentions that you need Department of Veterans Affairs (DVA) benefits, your positive drug test was in error, and you never failed a drug test or had drug related issues.

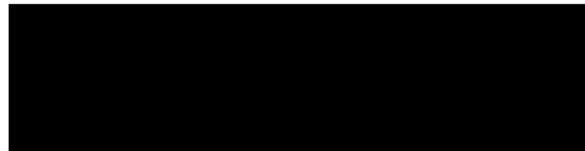
The Board noted whether or not you are eligible for benefits is a matter under the cognizance of the DVA, and you should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA. The Board also noted that there is no evidence in your record, and you submitted none, to support your contention that your positive drug test was in error. Regarding your contention you never failed a drug test or had drug related issues. The record clearly shows that you received NJP for wrongful use of marijuana.

Regarding your request for an upgrade to your characterization of service, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined you were appropriately discharged for drug abuse based on your NJP for wrongful use of marijuana. Further, the Board considered that you were medically evaluated for a possible drug dependence prior to your separation and determined not to be drug dependent. As a result, in weighing your drug related misconduct against the mitigation evidence in your case, the Board concluded the seriousness of your misconduct outweighed the mitigating factors. Specifically, the Board found your drug use to be conduct that, more likely than not, caused serious degradation to the good order and discipline of your command. Therefore, the Board determined that your conduct was a serious departure from that expected from a Sailor and continues to warrant an OTH characterization of service. 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,

3/24/2022

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Executive Director

Signed by: 