



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: 2673-22

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 9 May 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, 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).

You enlisted in the Navy and began a period of active duty on 1 October 1969. On 11 March 1971, you were accused by a Sailor from another command of selling LSD, at which point, you denied the allegations. Due to the lack of evidence other than the accusations of a self-confessed user, no further action was taken against you. On 29 March 1971, you received a warning from the Chief of Naval Personnel informing you that further misconduct may result not only on disciplinary action but in administrative separation. On 9 September 1971, you received an exception for drug use or possession incident. On 22 September 1971, you were approved to remain in service. On 11 October 1971, you were counseled for deficiencies in military behavior and advised that further misconduct could result in administrative separation. On 5 January 1972, you began a period of unauthorized absence (UA) which lasted four days, 20 hours, and 30 minutes. On 24 January 1972, you received nonjudicial punishment (NJP) for the period of UA. On 11 February 1972, you began a second period of UA which lasted three days, 6 hours, and 30 minutes. On 19 February 1972, you began a third period of UA which lasted four days. On 25

February 1972, you were arrested for possession of marijuana or H&S plant. On 12 April 1972, you received a second NJP for a period of UA and wrongful alteration of a military identification card. On 25 April 1972, the █ Municipal Court ordered the dismissal of drug charges against you.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for the good of the service. The Board relies on the presumption of regularity, therefore, in the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 12 December 1972, you were discharged with an OTH discharge for the good of service.

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 that you served two years of honorable service, that you served during the █ conflict and were able to complete two deployments, and that you would like to qualify for VA benefits. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your NJPs and good of the service discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded 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 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,

5/25/2022

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Executive Director

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