



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: 2904-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 11 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, 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).

You entered active duty with the Navy on 28 May 1981. On 11 February 1982, you received non-judicial punishment (NJP) for three specifications of failure to go to appointed place of duty and unauthorized absence (UA) totaling three days. On 21 January 1983, you received NJP for wrongful use of marijuana. On 22 January 1985, you were convicted by a special court-martial (SPCM) for possession of a concealed weapon and assault. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense and 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 commission of a serious offense and drug abuse, with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and on 16 July 1985, you were so discharged.

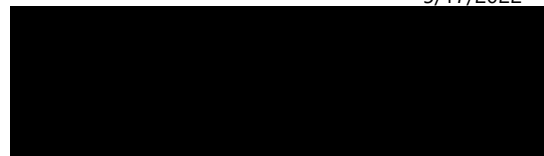
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge in addition to your contentions that your discharge was in error and your SPCM conviction was too harsh. 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 misconduct, as evidenced by your two NJPs and SPCM conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. In addition, the Board considered the fact your misconduct included a drug offense. The Board noted that there is no evidence in your record, and you submitted none, to support your contention that your discharge was in error. The Board also noted that the record shows that you were notified of your rights as part of your administrative separation processing and waived your right to present your case to an Administrative Discharge Board (ADB). Lastly, the Board noted that your punishments were a direct result of your actions and was not persuaded by the mitigating assertion that your SPCM conviction was too harsh. 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. 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 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,

5/17/2022

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Executive Director

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