



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: 3024-22
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 22 June 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 24 June 1981. On 18 February 1983, a special court-martial (SPCM) convicted you of 92 days unauthorized absence (UA) and transferring marijuana. On 25 April 1983, a substance abuse report determined that you were not drug/alcohol dependent. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug trafficking. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to drug trafficking and recommended you receive a General (Under Honorable Conditions) characterization of service. However, the separation authority (SA) disagreed with the ADB and directed your commanding officer (CO) to reprocess you for misconduct due to commission of a serious offence.

On 21 September 1983, your CO notified you of pending administrative separation action by reason of misconduct due to commission of a serious offense. You waived your rights and your CO forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 23 December 1983, 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 and contentions that you did not sell or use drugs, someone asked about drugs and you only introduced them to another individual, and you have been trouble free since discharge. 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 your misconduct, as evidenced by your SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included an extended period of UA and drug trafficking. Contrary to your contention that you did not sell or use drugs and only introduced someone to another individual. The Board noted that an ADB determined you committed misconduct due to drug trafficking and recommended you for separation. As a result, the Board concluded that your conduct was a significant departure from that expected from 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 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,

7/5/2022

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