



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: 3192-22
Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 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 service on 28 February 1996. After less than 8 months of service, you received nonjudicial punishment, on 12 October 1996, for wrongful use of marijuana. After waiving your hearing before and administrative separation board, you were discharged under Other Than honorable Conditions (OTH), on 28 October 1996, for misconduct due to drug abuse.

In a request to the Naval Discharge Review Board (NDRB) in 2003, you contended that you did not use drugs but were required to take a urinalysis based on a theory of guilty by association because you associated with a group of sailors who were collectively targeted for drug screening. You asserted that your urinalysis results were negative, but that you had chosen to admit to drug use as a matter of convenience in order to procure a discharge without understanding the severity

of the consequences associated with an adverse discharge. Then, like now, you believed that your record would reflect that you had not used illegal drugs. On 21 November 2003, the NDRB determined your discharge was proper as issued and that no change was warranted.

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 your contentions that you did not know the reason you received an OTH characterization of service, that your urinalysis results were negative, and that you offered to give a blood sample in support of your negative results to support your claim of innocence. 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, outweighed these mitigating factors. In making this finding, the Board noted that you provided conflicting arguments regarding your misconduct to the NDRB and this Board. Additionally, the Board considered the seriousness of your misconduct that included a drug offense. Ultimately, the Board determined that your assertions were unsupported by any documentary evidence and, when weighing your brevity of service against your misconduct, concluded your conduct constituted a significant departure from that expected of a Sailor. As a result, the Board determined your conduct 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, the Board determined that your request does not warrant 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 is attached 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,

6/1/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]