



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: 3240-22
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 13 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).

During your enlistment processing you admitted to marijuana use. Despite your admission, you were able to proceed, enlisting in the U.S. Navy and commencing a period of active duty on 23 July 1990. On 24 July 1990, you were briefed on the Navy's drug and alcohol abuse policy. On 25 June 1991, you received nonjudicial punishment (NJP) for the theft of a cassette tape and a polo shirt. On 29 June 1991, administrative remarks in your official military personnel file (OMPF) documented your deficiencies, adding you were being retained in the naval service and advising you that further deficiencies in your conduct could result in administrative separation processing. On 5 February 1992, you were found guilty at a special court-martial (SPCM) of wrongful possession and introduction of marijuana to █, failing to obey a lawful general regulation by loansharking, and breaking restriction. You were sentenced to confinement for four months and to forfeit \$350.00 pay per month for four months. On 9 March 1992, the Convening Authority approved all of your sentenced except forfeitures of \$350.00 pay per month in excess of two months.

On 14 February 1992, you were notified of your pending administrative separation due to commission of a serious offense (COSO) and drug abuse, at which time, you elected your right to consult with counsel and to have your case heard before an administrative discharge board (ADB). On 3 March 1992, you were evaluated as not drug or alcohol dependent, further recommending you for further service. On 5 March 1992, you waived your right to present your case before an ADB and submitted a statement requesting you be given consideration by the granting of a General (Under Honorable Conditions) (GEN) characterization of service. On 17 March 1992, your commanding officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) discharge by reason of COSO and Drug Abuse. On 28 March 1992, the separation authority agreed with your CO and directed your discharge by reason of misconduct for drug abuse (possession) and, on 10 April 1992, you were so discharged.

The Board carefully reviewed your application and considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These include, but are not limited to, your desire for a discharge upgrade and contentions that: (1) you were court-martialed for an incident that had nothing to do with you, (2) after all evidence was presented you were cleared of the most serious charges and allowed to return to your duties while awaiting an administrative hearing, (3) your lawyer informed you that it would be in your best interest to waive the hearing and be discharged under honorable conditions, (4) you were under the impression that your discharge would be an Honorable vice Other Than Honorable, (5) you were given very bad advice causing you to give up all of your benefits, (6) you were young and naïve at the time and accepted the bad advice from your lawyer, (7) you served eight months in the Indian Ocean during Desert Storm and feel you should be eligible for some, if not all, of the benefits from your service, and (8) you are trying to purchase a home for your children and being able to obtain a veterans affairs (VA) loan would be very helpful. 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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a drug offense. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board considered your overall trait average was 1.2 with a military behavior average of 1.0. In addition, the Board found no evidence to substantiate your allegations of bad advice from your attorney or that you had nothing to do with the incident that resulted in your court-martial conviction. Finally, 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 Marine 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,

7/5/2022

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Executive Director

Signed by: █