



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: 3462-22
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 enlisted in the Navy and began a period of active duty on 25 September 1979. During the period from 11 April 1980 to 10 November 1981, you received five instances of non-judicial punishment (NJP). Your offenses were wrongful possession of marijuana on three occasions, assault with intent to do bodily harm, wrongful use of marijuana, assault consummated by a battery, and unauthorized absence. On 11 November 1981, you were issued an administrative counseling (Page 13) advising you that any further misconduct may result not only in disciplinary action, but in processing in administrative separation. On 17 December 1981, you received your sixth NJP for wrongful use of marijuana. Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of

misconduct due to frequent involvement of a discreditable nature with military authorities. The notification advised that if separation was approved, the least favorable description of service authorized in your case would be under Other Than Honorable (OTH) conditions. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. Prior to the SA's decision, on 7 February 1982, you received your seventh NJP for wrongful use of cocaine on three occasions, wrongful use of marijuana on two occasions, and unauthorized absence totaling five days. The SA approved the CO's recommendation and directed your OTH discharge from the Navy. On 12 February 1982, you were discharged from the Navy by reason of misconduct due to frequent involvement of a discreditable nature with military authorities with an OTH characterization 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 desire to have any medals or ribbons returned to you and your desire to upgrade your discharge character of service. The Board also considered your assertions that you were 17 years old when you enlisted into the Navy, very immature and rebellious, got into a lot of trouble on the ship, and regret your actions. You assert that you were a very good Sailor and loved your country. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your seven NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Finally, the Board noted that you were found guilty of ten drug offenses during your period of active duty and, contrary to your assertion, wrongful use of controlled substances, including marijuana, remain a violation of the Uniform Code of Military Justice. As a result, the Board determined 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 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, _____

7/7/2022

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Executive Director

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