



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: 3712-22
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 July 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 27 September 1972. On 15 January 1974, civil authorities charged you with possession of marijuana with intent to distribute. During the period from 13 February to 23 May 1974, you received three non-judicial punishments (NJP) for wrongful appropriation of a Vernier Caliper, making a false official statement, unauthorized absence (UA) totaling one day, and failure to obey a lawful order. On 10 September 1974, civil authorities convicted you of possession of marijuana with intent to distribute. You were sentenced to a period of confinement for one year, fined \$300.00, and two years' probation. As a result, you were notified of pending administrative separation action by reason of civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to civil conviction with a General (Under Honorable Conditions) characterization of service. The SA approved the CO's recommendation and, on 22 November 1974, 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 are attempting to qualify for USAA insurance, you were young, immature and made a mistake. 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 three NJPs and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the fact it included a drug offense, and included potential distribution of those drugs. Further, the Board considered the prejudicial nature of your civilian conviction had on the Navy. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans benefits (such as [REDACTED]). Finally, the Board noted that the evidence of record did not show that you were not responsible for your conduct, that you should not be held accountable for your actions. As a result, when considering your active duty record, the Board concluded that the preponderance of the evidence supports a finding that the negative aspects of your active duty service outweighed the positive aspects and warrants the assignment of a General (Under Honorable Conditions) characterization of service. 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 your case.

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,

[REDACTED]
7/23/2022

[REDACTED]
Executive Director
[REDACTED]