

DEPARTMENT OF THE NAVY BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No: 3716-22 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 threemember panel of the Board, sitting in executive session, considered your application on 19 October 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 2 November 1993. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy, on 19 December 1995, with a "General (Under Honorable Conditions)" characterization of service, your narrative reason for separation is

"Misconduct," your reenlistment code is "RE-4," and your separation code is "KKK" which corresponds to misconduct due to drug abuse.

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 character of service and change your narrative reason for separation along with your separation code. The Board also considered your assertions that you do not have a criminal record, any record of alcohol or drug abuse or other types of misbehavior, you frequently volunteer in your community, you are active in veteran organizations, and strive to be exemplary in all things. You further contend that you have been married for nearly 23 years with two children, you own your home, you earned your bachelor's diploma, and you are currently in pursuit of your graduate level diploma. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 discharge for misconduct due to drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board also determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Finally, the Board determined that the assignment of an RE-4 reentry code and separation code of "KKK" is authorized by regulatory guidance and assigned when the service member is processed for administrative separation by reason of misconduct due to drug abuse. As a result, the Board determined significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Ultimately, while the Board considered your advocacy letters and commended you for your post-discharge good character, they concluded that it was insufficient mitigation evidence to outweigh your misconduct. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, or granting clemency in your case. 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,

