



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: 3842-22

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 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, 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 enlisted in the Navy and began a period of active duty on 16 May 1980. On 1 December 1980, a Medical Board diagnosed you with Synostosis, Left Tibia and Fibula and placed you on limited duty. You were subsequently returned to full duty status. You went into an unauthorized absence status for two days in November 1981 and resulted in the imposition of NJP on 25 November 1981. On 21 April 1982, you received a second NJP for wrongful use of a controlled substance-marijuana. As a result, on 25 June 1982, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you elected to waive all your procedural rights. While pending separation, on 1 July 1982, you received a third NJP for wrongful use of marijuana. On 9 July 1982, your commanding officer recommended a type of discharge determined by service record due to drug abuse. On

23 July 1982, the discharge authority ordered your discharge with an Other Than Honorable (OTH) characterization of service by reason of misconduct due to drug abuse. On 2 August 1982, you were 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 for a discharge upgrade and contentions that you never used drugs before joining the Navy, that your prescribed medications did not fully relieve you from the pain following your ankle surgery, that you elected to use marijuana to relieve the intense chronic pain, and that peer pressure led you to wrongfully use marijuana. 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included two separate drug offenses. The Board was not persuaded by your arguments that your conduct should be mitigated based on your medical condition at the time. The Board noted you were a Corpsman and, more likely than not, understood you had other medical options to relieve your pain symptoms. Further, the Board found your arguments of peer pressure to use marijuana inconsistent with your arguments that you used marijuana to relieve pain symptoms. As a result, the Board concluded 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 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,

7/14/2022

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Executive Director
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