



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: 4105-22
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 case 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 this 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 and entered a period of active duty in the Naval Reserve on 3 February 1983. On 17 June 1985, you tested positive on a urinalysis screening for THC (marijuana) use. On 21 June 1985, you underwent a medical evaluation for substance abuse, were found to be psychologically dependent, and recommended for Level III treatment. During this evaluation, you disclosed to the medical officer that you had used marijuana five to seven times a week for 11 years prior to enlistment and weekly use for the past year prior to your positive urinalysis. You were found free from mental derangement, able to distinguish right from wrong, and able to participate in legal or administrative proceedings. You received nonjudicial punishment (NJP), on 12 July 1985, for disobeying a lawful order and wrongful possession and use of marijuana in violation of Articles 92

and 112a, Uniform Code of Military Justice. On 12 July 1985, you were notified of administrative separation processing by reason of misconduct due to drug abuse. An administrative discharge board reviewed your case and unanimously recommended that you be separated from the service with an Other Than Honorable (OTH) characterization of service. You elected to accept inpatient treatment at a Department of Veterans Affairs hospital for rehabilitation due to drug dependency prior to your discharge. You were subsequently discharged with an OTH characterization of service on 27 May 1986.

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, post-service conduct, and contention that your use of drugs in June 1985 was foolish, immature, and irresponsible. You contend that in accordance with the Wilkie Memo, your post-discharge conduct, including your rehabilitation, atonement for past misconduct, and character and reputation in the community, strongly supports an upgrade. You further argue that your misconduct was minor, nonviolent, and occurred over thirty years ago. For purposes of clemency consideration, the Board noted provided supporting documentation describing post-service accomplishments and 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 admission to years of preservice and in-service drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact your misconduct, by your admission, included multiple drug offenses. Further, in its deliberations, the Board commended your efforts to receive rehabilitation treatment, your educational pursuits, and community volunteerism. However, the Board ultimately concluded the mitigation evidence was insufficient to overcome your misconduct. Contrary to your arguments that your misconduct was minor, the Board found your admission of multiple incidents of drug abuse to be a serious detriment to the good order and discipline of your command. This led the Board to find that your post-discharge good character was insufficient to warrant clemency in your case. 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 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, _____

7/11/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]