



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: 4508-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 September 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 to 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 1 August 1990. You served without incident until 19 September 1992, when you accepted nonjudicial punishment (NJP) for a violation of Article 86, failure to go to your appointed place of duty. Your suspended punishment was vacated shortly thereafter, at a second NJP, on 27 September 1992 for a violation of Article 91. You received a third NJP, on 31 August 1993, again for violations of Article 86 and Article 91, insubordinate conduct. The following year, on 27 July 1994, you were convicted, contrary to your pleas of "not guilty," and notwithstanding representation by qualified legal counsel, to two specifications of violations of Article 112a for wrongful possession and distribution of marijuana. Your adjudged punishment included a Bad Conduct Discharge (BCD). You began appellate leave, and you were discharged in absentia, on 25 July 1996 following completion of appellate review of your trial proceedings.

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 your contentions

through counsel that the military judge failed to properly consider evidence offered in your defense and adjudged a disproportionately harsh punishment. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these mitigating factors. The Board considered your contentions that the evidence of distribution presented against you was procured on behalf of the Naval Criminal Investigative Service by another service member who was facing criminal jeopardy. Additionally, the Board considered your contentions that, during trial, you presented evidence of suffering from various mental health conditions for which you had not been provided adequate counseling assistance by your chain of command, and the Board noted your assertion that the military judge did not properly taking mitigating evidence into account. However, with respect to your contentions of error or injustice regarding the trial proceedings at which your BCD was adjudged, the Board observed that your trial proceedings were subject to thorough appellate review, and the Board found insufficient evidence to overcome the propriety of those proceedings. Although the Board favorably noted your evidence of post-discharge character, to include a letter of support from your former Commanding Officer with whom you have remained in contact, the Board observed that your conviction for drug distribution was not only a very serious offense but was also the culmination of an ongoing and continuous pattern of misconduct during your active service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. 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 is attached 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,

10/12/2022

[REDACTED]