

DEPARTMENT OF THE NAVY

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

> Docket No: 4531-22 Ref: Signature Date

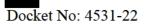


This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 1 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 enlisted in the Navy and completed a United States Alcohol and drug abuse screening certificate (NAVCRUIT 1133/65), in which you acknowledge you would receive another drug test upon your entrance into active service, and a positive test result would result in administrative separation. You further from the date of the forms certification on 5 April 1999. Subsequently, you began a period of active service on 5 April 1999 and acknowledge that you had not used illegal drugs. On 6 April 1999, your urine was collected for a drug screen, and was later returned positive for marijuana use. As a result, on 13 April 1999, you were notified of the initiation of administrative separation proceedings by reason of erroneous enlistment. On the same day, you waived your right to consult with counsel. On 19 April 1999, you were discharged with an entry level separation (ELS) by reason of erroneous entry 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 change your character of service to General (Under Honorable Conditions) and contentions that your recruiter was aware of a pre-enlistment positive drug screen and you later passed an additional drug test while in basic training. 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 drug abuse, as evidenced by your positive urinalysis, outweighed these mitigating factors. In making this finding, the Board considered that you tested positive for marijuana use despite attesting that you did not wrongfully use a controlled substance after your enlistment and were warned of the consequences of further drug abuse. Additionally, the Board noted you did not provide any evidence to substantiate your contentions. As a result, the Board concluded you were properly discharged for erroneous enlistment and assigned an uncharacterized entry level separation based on your active duty service of less than 180 days. 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.

