



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: 4552-22
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 three-member panel of the Board, sitting in executive session, considered your application on 1 August 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).

During your enlistment processing you admitted to underage drinking, aiding and abetting a DWI (driving while intoxicated) and using marijuana twice. Despite your admission, you were granted an enlistment waiver. You enlisted in the U.S. Navy and commencing a period of active duty on 23 April 1992.

On 29 April 1992, you were briefed on the Navy's drug and alcohol abuse policy. On 10 February 1993, you received your first nonjudicial punishment (NJP) for failing to go to your appointed place of duty and willful disobedience of a Chief Petty Officer. You were subsequently counselled and issued administrative remarks documenting the offenses of your NJP and advising you that although you were being retained in the naval service, subsequent violation(s) of the UCMJ (uniform code of military justice) or conduct resulting in civilian conviction could result in an administrative separation under other than honorable conditions. On 27 February 1993, after testing positive on a urinalysis, you underwent a medical evaluation that

determined you were not drug dependent and no rehabilitation or detoxification was required. On 4 March 1993, you received NJP for the wrongful use of a controlled substance. Subsequently, you were notified of your pending administrative separation due to drug abuse, at which time you waived your right to consult with counsel and to have your case heard before an administrative discharge board. Your commanding officer's (CO's) recommended to the separation authority that you be separated under Other Than Honorable (OTH) conditions. On 12 March 1993, the separation authority agreed with your CO and directed your discharge by reason of misconduct for drug abuse. On 1 April 1993, you were so 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 to upgrade your discharge and contentions that: (1) you are seeking a discharge upgrade in order to apply for and obtain Department of Veterans Affairs (VA) benefits and a VA identification card, (2) you have been diagnosed with leukemia and would like to have medical help via the VA, and (3) it was an isolated incident in an otherwise admirable conduct while serving. 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 two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. As with each case before the Board, the seriousness of a single act must be judged on its own merit; it can neither be excused nor extenuated solely on its isolation. However, in your case, the Board noted that you had two additional instances of misconduct that supported your assigned characterization of service. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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. While the Board was sympathetic to your current medical condition, 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, _____

8/16/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]