



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: 4751-22

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 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, 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 27 December 1978. On 7 March 1978, you received nonjudicial punishment (NJP) for possession of a controlled substance-marijuana. On 16 October 1979, you began a period of unauthorized absence (UA) which lasted 14 days. On 3 December 1979, you received a second NJP for a period of UA. On 28 December 1979, you received a third NJP for unlawful possession of a controlled substance. On 31 December 1979, you began a period of UA which lasted 190 days. On 26 August 1980, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. On 14 October 1990, you were discharged with an OTH discharge in lieu of trial by court martial.

Although the Board lacked your entire service record, the Board relied on a presumption of regularity that you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of receiving an OTH. The Board

relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Therefore, the Board presumes you were properly discharged from the Navy.

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 needed to attend your family's business following the sudden passing of your father and you served honorably as reflected on your previous evaluations. 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 and request to be discharged in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included two separate drug offenses. The Board also noted that your long term period of UA occurred immediately after you were placed on restriction for possessing a controlled substance. Therefore, the Board was not persuaded by your assertions that you left without authorization to assist with your family's business. Finally, the Board considered that you already received a large measure of clemency from the Navy when they accepted your request to be discharged administratively in lieu of trial by court-martial; thereby sparing you the stigma of a conviction and likely punitive discharge. 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,

8/8/2022

