



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

█
Docket No: 4948-22
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 17 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).

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 in the Navy and began a period of active service on 5 August 2002. On 22 February 2006, you were discharged an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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 (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD

Form 214), reveals that you were separated from the Navy on 22 February 2006 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct – Drug Abuse," your separation code is "HKK," and your reenlistment code is "RE-4."

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 characterization of service to General (Under Honorable Conditions) and change your narrative reason for separation. You contend that you earned a good conduct medal, never used drugs, and had post-discharge good conduct. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no 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 DD Form 214, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. As previously noted, your record is incomplete, however, whenever official records are incomplete or unavailable, unless there is substantial credible evidence to rebut the presumption, the Board can presume a regularity in the conduct of the government affairs. The Board noted you failed to provide evidence to overcome that presumption. In making this finding, the Board also considered your relatively poor performance evaluations that averaged below fleet standards for your paygrade and rate. 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 commends your post-discharge accomplishments, 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,

9/8/2022

[REDACTED]

Executive Director

[REDACTED]