



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. 5395-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 28 October 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 U.S. Navy and began a period of active duty on 2 July 1981. You were investigated for fraudulent enlistment and subsequently granted a waiver, on 26 August 1981, for your illegal use of marijuana before coming into the service. On 9 February 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA) and making a false official statement. On 8 June 1984, you tested positive for illegal use of marijuana. On 23 May 1985, you received your second NJP for driving under the influence (DUI) and wrongfully possessing of two military identifications. On 31 January 1986, you received NJP for violation of a general regulation, drunk and disorderly, indecent language and two specifications of assault. Subsequently, you were notified for administrative separation for misconduct due to commission of a serious offense. You waived your rights to consult with military counsel and to request an administrative board hearing. Your Commanding Officer (CO) recommended to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation on 18 April 1986. Subsequently, you were discharged, on 25 April 1986, with an OTH.

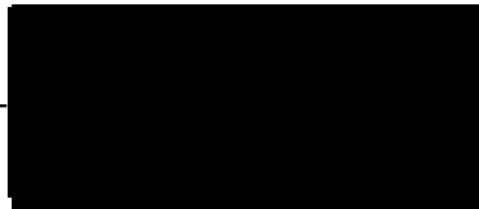
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade so you may be buried in a place beyond Poppers Field. For purposes of clemency and equity consideration, the Board noted you provided a statement but no 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 three NJPs and positive urinalysis, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and noted the nature of your misconduct and concluded it showed a complete disregard for military authority and regulations. Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

11/17/2022

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