



counsel for the respondent under the name of your previously identified civilian counsel. Page 3 of the Record of Proceedings documents your Respondent's Case to include exhibits presented by your counsel which were identified as "Exhibit A." The record reflects that the Recorder had no objections to the Respondent's Exhibits. The Senior Member accepted the exhibits and made them part of the record. Upon review of all matters presented, to include your sworn statement, following which you were subject to cross examination, the members of the board unanimously found it more likely than not that the evidence substantiated the basis of drug abuse. Notwithstanding their finding of misconduct, the members recommended by a vote of 2-1 that you should be retained in the Navy and not separated. Commanding Officer, ██████████, ██████████, forwarded a concurring recommendation; however, the Commander, Navy Personnel Command (CNPC), determined that the substantiated basis of misconduct due to drug abuse warranted separation, and you were discharged with a General (Under Honorable Conditions) on 27 July 2017.

On 22 May 2018, the Naval Discharge Review Board (NDRB) considered your request for an "Honorable" discharge and changes to your narrative reason for separation, separation authority, and reentry code, based on contentions that a false positive urinalysis resulted from a combination of over the counter (OTC) medications. Ultimately, the NDRB determined your discharge was proper as issued.

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, your evidence of post-discharge character, your detailed contentions that you were administratively discharged due to a false positive result for the urinalysis, you were denied an opportunity for a retest to establish that OTC medications resulted in a false positive, the evidence of your negative hair follicle test was denied admission into evidence, and that actual evidence of wrongful drug use was inconclusive. For purposes of clemency and equity consideration, the Board noted the supporting documentation you submitted with your application.

After thorough 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that it involved a drug offense. While the Board noted you submitted a request to the Naval Criminal Investigative Service seeking retesting to verify whether the same false positive might occur with the combination of OTC medications you purport to have taken, the Board found that the preponderance of the evidence does not support your contentions of a false positive. The Board observed that your hair follicle test indicated a negative result but the Board concluded that this evidence was insufficient to support relief. Specifically, the Board observed that the single test performed by the civilian testing facility indicates a cutoff for benzos similar to the initial cutoff used by the Naval Drug Lab; however, the confirmatory cutoff specific to oxazepam is not identified. The Board further lacked sufficient information to compare the two methods of testing or even information which might support the reliability of the test results. For example, the Board lacked evidence that, in the approximately 3 months between your positive urinalysis and your hair follicle test, the hair tested would have had the same exposure as if it had been tested at the time of your December 2016 urinalysis. Additionally, although you contend that this test was refused admission into evidence, the Board observed no indication that your counsel offered this test as an exhibit.

