



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: 5594-22
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).

You entered active duty with the Navy on 2 December 1980. On 18 May 1982, a summary court-martial (SCM) convicted you of unauthorized absence (UA) totaling 80 days. On 12 March 1983, your commanding officer (CO) referred you for a medical evaluation after you tested positive for marijuana on two separate occasions. On 27 April 1983, a Substance Abuse Report noted that you continued to abuse controlled substances and rejected the opportunity to receive treatment from the Department of Veterans Affairs (VA) upon your discharge from the Navy. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 3 June 1983, you were 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 in addition to your contentions that your discharge should be upgraded based on your meritorious service prior to your discharge, you were threatened by your Leading Petty Officer, you made mistakes but were otherwise a good Sailor, and you need VA benefits. 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 SCM and subsequent drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. The Board was not persuaded by your arguments and noted that a characterization of service lesser than Honorable is appropriate in cases involving serious misconduct even when a member's service is otherwise meritorious. Further, the Board noted that you declined VA treatment for your drug use and continued to abuse drugs despite efforts from the Navy to get you to stop. Moreover, the Board found no evidence to substantiate your allegations of threats. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. 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. 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,

8/25/2022

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