



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. 5745-22
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 25 January 2023. 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 U.S. Navy and began a period of active duty on 22 September 1981. You received non-judicial punishments (NJP), on 21 April 1982 and 21 August 1982, for dereliction of duty. On 30 December 1982, you received your third NJP for unauthorized absence (UA) for 7 hours and failure to go to appointed place of duty. Subsequently, you were issued a counseling warning on 30 December 1982 where you were warned that you were being retained in the naval service but any further misconduct may result not only in disciplinary action but also processing for administrative discharge.

On 7 October 1983, you received your fourth NJP for sleeping on watch. Subsequently, you were issued another counseling warning informing you that any further misconduct may result in disciplinary action but also in processing for administrative separation. After an incident involving possession of marijuana, UA and sleeping on watch, you were again counseled on 10 November 1983 and given the same warnings about further misconduct.

On 27 March 1984, you received your fifth NJP for a three hour UA. Part of this punishment was suspended pending good behavior. However, on 25 August 1984, your suspended punishment was vacated after you continued your misconduct. The same day, you received your sixth NJP for UA and dereliction of duty.

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, 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 October 1984 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct: Frequent Involvement," your separation code is "MBM," and your reenlistment code is "RE-4." Your separation code indicates you were separated for misconduct involving frequent involvement with military authorities.

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 an upgrade in your characterization of service and contentions that you have been a productive member of society for 35 years, you are ashamed of your OTH and that you made mistakes in your past, you requested to finish out the last 10 months of active duty, and you made a mistake accepting an OTH since you did not deserve it. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

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 six NJPs and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Additionally, the Board also 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. Finally, the Board noted that you did not provide any evidence to substantiate your contention that your OTH was not deserved. Contrary to your assertion, the Board found that

your record of misconduct and failure to heed multiple warnings that continued misconduct would result in adverse administrative processing reasonable supports a finding that your chain of command acted reasonably in your case and assigned you an appropriate characterization of service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH. While the Board commends your post-discharge accomplishments and good character, 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 granting you the relief you requested or granting relief 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,

2/2/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]