



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: 5882-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your brother's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your brother's 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 19 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 brother's 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).

Your brother enlisted in the Navy and began a period of active service on 29 January 2001. He received non-judicial punishment (NJP), on 23 May 2001, for two specifications of unauthorized absence and wrongful use of marijuana. He was notified of the initiation of administrative separation proceedings, at which point, he waived his right to consult with counsel, a hearing of his case before an administrative discharge board (ADB). On 31 May 2001, the commanding officer recommended your brother's separation from naval service with an Other Than Honorable (OTH) character of service, by reason of misconduct due to drug abuse. On the same day, the separation authority approved the recommendation and direct his separation. Your brother was discharged by reason of misconduct due to drug abuse, on 7 June 2001, 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 to upgrade your brother's characterization of service so that he may qualify for veterans' burial benefits and contentions that he passed after suffering an accident that left him paralyzed. 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 brother's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact it included a drug offense. Further, the Board considered the brevity of his service. While the Board offered its condolences for your loss, the Board determined that illegal drug use by your brother is contrary to Navy core values and policy, rendered him unfit for duty, and posed an unnecessary risk to the safety of his fellow Sailors. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your brother's conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board was sympathetic to your wishes to give him a military burial, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his 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,

9/9/2022

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Executive Director

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