



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: 6119-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 November 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 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy, after disclosing a pre-service disciplinary record for two incidents of possession of alcohol by a minor, malicious mischief, and traffic offenses, and began a period of active duty on 21 November 1983. You were subject to nonjudicial punishment (NJP) in July 1984 for a violation of Article 86 due to unauthorized absence (UA) the morning following the 4th of July holiday. As punishment, you were assigned 30 days of correctional custody; however, you again absented yourself for a period of 28 hours from 25 – 26 Jul 1984 prior to surrendering to military authority. In response, you were administratively counseled for unsatisfactory performance and issued a derogatory evaluation. On 4 September 1985, you were convicted by civilian authorities for driving under the influence. A substance abuse report in January of 1986 found you psychologically dependent on drugs and, on 29 January 1986, you were convicted again by civilian authorities, this time for violation of your probation. On

11 February 1986, you were convicted by Summary Court-Martial (SCM) for a violation of Article 112a due to wrongful use of the controlled substance marijuana. Upon notification of processing for administrative separation by reason of misconduct due to drug abuse, you waived consultation with legal counsel and waived your right to a hearing before an administrative board. In his recommendation for your separation under Other Than Honorable (OTH) conditions, your commanding officer noted your repeated alcohol-related misconduct, drug dependency, negative influence within the command, and “strong interest in being discharged.” Your separation for drug abuse was approved by Commander, Navy Military Personnel Command, and you were discharged with OTH, on 11 March 1986, with a final trait average of 2.73 out of 5.

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 and your contentions that you were subject to a hostile work environment, including allegations that your senior enlisted leader had retained “Top Secret” information and ordered you to improperly dispose of it. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or 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 NJPs, 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 observed substantial documentation of misconduct throughout your service, to include alcohol-related offenses, wrongful drug use, unauthorized absences, and serious civilian offenses – any of which would have merited an OTH discharge. The Board noted that you did not provide any evidence in support of your claims of injustice or hostile work environment and, further, observed no evidence in your record that might support your assertions given the scope and frequency of misconduct related to alcohol and substance use without any reference to classified material. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member 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 the 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 is attached 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,

12-19-2022

