



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: 7001-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 14 December 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).

After enlisting in the Navy, you completed an honorable period of active service from 7 July 1977 to 26 October 1980. You immediately reenlisted and began your second period of active service on 27 October 1980. On 10 June 1983, you were counseled and advised your drug related misconduct was such that any further drug involvement may result in administrative separation. You subsequently received NJP, on 1 July 1983, for wrongful use of a controlled substance. On the same day, you were notified, continuation of your past performance may disqualify you from receiving an Honorable discharge. You were again counseled, on 10 August 1983, that due to your identified deficiencies, you would be issued a reenlistment code that required Naval Military Personnel Command (NMPC) approval for reenlistment. You were notified of your deficiencies and notified remedial action was required. As a part of your treatment for substance abuse, you completed a rehabilitation program in December 1983.

However, after testing positive on another urinalysis, on 18 May 1984, you were notified of the initiation of administrative separation proceedings as a result of your misconduct due to drug abuse. Subsequently, on 21 May 1984, you received non-judicial punishment (NJP) for wrongful use of marijuana. You elected your right to consult with counsel, and a hearing of your case before an administrative discharge board (ADB). On 5 July 1984, an ADB convened and unanimously recommended your separation from naval service, with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. Consequently, the separation authority approved the recommendation and directed your separation with an OTH characterization of service by reason of misconduct due to drug abuse. On 29 August 1984, you were so 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 characterization of service and contentions that you feel your discharge was retaliatory, and you were notified you could upgrade your character of service six months after your discharge. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter.

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 multiple incidents of drug abuse. 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 took into consideration that you were notified regarding the consequences of continued misconduct, received treatment, and continued to abuse drugs. This led the Board to conclude your conduct showed a complete disregard for military authority and regulations. 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. 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 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,

1/8/2023

[REDACTED]

Executive Director

[REDACTED]