



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No. 7475-22

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 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 this 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 enlisted in the United States Navy and commenced a period of active duty on 28 October 1980. On 30 April 1981, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 92, for failing to obey a lawful order by wearing civilian clothes while in duty section and for possession of marijuana. You did not appeal your NJP.

On 2 December 1981, you were screened by the Counseling and Assistance Center (CAAC) and determined to be psychologically and physically dependent on alcohol. It was recommended that you "be placed in a supervised Antabuse program and encouraged to attend Alcohol Anonymous (AA) meetings." On 17 May 1982, you completed alcohol treatment and notified that if you return to drinking, thereby effecting your work performance, it may result in your administrative separation.

On 14 August 1982, you received your second NJP for violating UCMJ Article 92, for again wrongfully possessing marijuana. You did not appeal this NJP. You were given an administrative

Counseling (Page 13), notifying you that you were being retained in the naval service, but that further misconduct may result in your administrative separation.

On 7 April 1983, you received your third NJP for violating UCMJ Article 112(a), for the wrongful use of marijuana. You did not appeal this NJP. As a result of your continued misconduct, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 20 May 1983, you were discharged from the Navy for "Drug Abuse" with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

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 change your discharge characterization and your assertion that you have become a better man. For purposes of clemency consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved multiple drug offenses. The Board determined that illegal drug use is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board noted that you were repeatedly warned that continued misconduct may result in your administrative separation and that you were given plenty of support from your command and time to change your pattern of misconduct. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member, and continues to be the appropriate characterization in your case.

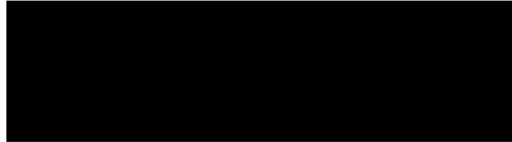
The Board further noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. While the Board applauds your efforts towards becoming a better man, the Board did not believe that your in-service record was otherwise so meritorious as to deserve a discharge upgrade. Lastly, 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 that your misconduct clearly merited your receipt of an OTH. 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,

1/31/2023



Executive Director

Signed by: █