



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: 7963-22

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 reconsideration application on 23 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 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 U.S. Navy and entered active duty on 2 March 1984. Your enlistment physical, on 25 October 1983, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You disclosed pre-service marijuana use on your enlistment application which required an enlistment waiver. On 16 June 1984, you reported for duty on board the █. When you checked onboard the ship, you acknowledged and signed the "USN Drug Abuse Statement of Understanding."

However, on 3 February 1986, you received you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You received the maximum punishment

permitted at NJP. You did not appeal your NJP.

On 15 April 1986, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel and expressly waived your rights to submit written rebuttal statements and to request a hearing before an administrative separation board. In the interim, while you were being monitored by the urinalysis surveillance program, you tested positive for another controlled substance (methamphetamine) as confirmed by the Navy Drug Screening Laboratory. Ultimately, on 21 May 1986, you were separated from the Navy for misconduct due to drug abuse with an Other Than Honorable (OTH) discharge characterization and assigned an RE-4 reentry code.

On 29 August 2006, this Board denied your initial petition for relief.

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 a discharge upgrade and change to your narrative reason for separation and contentions that: (a) you felt you had no other way to cope with the extreme marital stress you were facing due to your wife's suicide attempt, (b) the command committed an error of discretion occurred when you were discharged after one incident instead of receiving counseling or the support that you needed so you could continue your career in the Navy while also dealing with the marital stress you faced at home, (c) you were faced with an unprecedented predicament when your wife was struggling and you could not be there to support her as you were at sea, (d) you had the ability to be rehabilitated and it was an error of discretion to not allow such rehabilitation to take place, and (e) you have continued to lead an honorable life after discharge and your characterization of service is a material injustice. For purposes of clemency and equity consideration, the Board noted provided an advocacy letter, Department of Veterans Affairs documentation, and other supporting documentation along with a brief from your attorney.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board unequivocally concluded that your command did not commit a discretionary error in administratively separating you. Drug abuse in the Navy requires mandatory processing for administrative separation, and your command was thus required to initiate separation proceedings and not provide any opportunity for corrective action to take place.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use by a Sailor is contrary to Navy core values, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and

conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and 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 Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. The Board also noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board 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. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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, changing your narrative reason for separation, 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,

12/13/2022

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