



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: 8507-22
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 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 25 July 2018 guidance from 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active service on 7 January 1977. From the period beginning on 18 January 1978 to 13 September 1979, you went on unauthorized absence (UA) on four occasions, and you received non-judicial punishment (NJP) on three occasions. On 12 November 1979, you were counseled regarding your frequent disciplinary action, and further notified disciplinary action may result in administrative separation proceedings. You received NJP, on 14 March 1980, for possession of marijuana. You received your fifth NJP, on 4 February 1981, for possession of a controlled substance. On 23 June 1981, you were convicted at a special court martial (SPCM) for UA. You were counseled regarding your two drug

offenses, and notified it could result in administrative separation with an Other Than Honorable (OTH) character of service. You underwent a medical evaluation regarding your substance abuse, and you were recommended for inpatient treatment, which you completed on 25 October 1982. On 25 April 1983, you were notified of the initiation of administrative separation proceedings as a result of your misconduct due to drug abuse, at which point, you elected your right to consult with counsel, and waived a hearing of your case before an administrative discharge board (ADB). Subsequently, you received another NJP for marijuana use on 27 April 1983. The record reflects you tested positive for marijuana use through urinalysis on six occasions from the beginning on 6 May 1983 to 26 May 1983. On 3 June 1983, an ADB convened and unanimously recommended your separation from naval service, with a General (Under Honorable Conditions) (GEN) character of service by reason of misconduct due to drug abuse. On 9 June 1983, your commanding officer concurred with the ADB recommendation. Subsequently, on 23 December 1983, you were discharge with an GEN characterization of service by reason of misconduct due to drug abuse.

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 contention that your separation was based on false positive drug tests.

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, SPCM, and multiple positive urinalysis results, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated drug related misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board took into consideration that you were notified regarding the consequences of continued misconduct and provide rehabilitation treatment for your drug abuse. This led the Board to conclude you showed a complete disregard for military authority and regulations. Finally, the Board noted you provided no evidence to substantiate your contention that your multiple positive urinalysis results were false positive results. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Therefore, the Board concluded your multiple positive urinalysis results support your administrative separation for drug abuse. As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN 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,

12/30/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]