



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

█
Docket No. 8538-22
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 14 April 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 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.

Following a period of service in the U.S. Air Force, you subsequently enlisted in the U.S. Navy and entered active duty on 27 December 1983. Your pre-enlistment physical examination, on 1 July 1983, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 28 December 1983, at Recruit Training Command, you acknowledged being briefed on the: (a) Navy policy on drug and alcohol abuse, (b) legal consequences of illicit drug use, (c) effects of drug and alcohol abuse on discipline and combat readiness, (d) consequences of drug trafficking, (e) physical and psychological effects of drug and alcohol abuse, and (f) the

Navy's urinalysis screening program. You also acknowledged reading the "Drug and Alcohol Abuse Statement of Understanding," and certified you understood all the information contained therein. You were honorably discharged, on 30 August 1989, for purposes of your immediate reenlistment that commenced on 31 August 1989.

On 19 December 1994, Chief of Naval Operations promulgated a message implementing the "FY96 Enlisted USN Temporary Early Retirement Authority" (TERA) for certain enlisted personnel serving in eligible ratings at certain paygrades meeting proscribed years of service. In order to apply for TERA members must be eligible and recommended for retention/reenlistment, and not have disciplinary or administrative actions pending. Eligible enlisted personnel in your "STG" rating needed to be in either paygrades E-6 or E-7 with at least 15 years of service, but less than twenty years of service.

On 27 September 1995, your TERA based request for transfer to the Fleet Reserve was authorized, effective 30 September 1996. However, on 26 January 1996, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana. On 27 January 1996, you provided a voluntary sworn statement wherein you admitted to smoking a marijuana cigarette, on 23 December 1995, at a nightclub while in the company of your wife and some civilian acquaintances.

On 31 January 1996, you received non-judicial punishment (NJP) for the wrongful use of marijuana. You were found guilty and as part of your punishment you were reduced in rank to paygrade E-5 (STG2). There is no indication of any NJP appeal in your service record.

On 7 February 1996, you were notified of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel and elected your right to request an administrative separation board (Adsep Board).

On 3 March 1996, an Adsep Board convened in your case, and at the Adsep Board you were represented by a Navy Judge Advocate. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence presented proved you committed misconduct due to drug abuse. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be retained in the Navy.

However, the Chief of Naval Personnel (CNP) reviewed your case and, on 25 July 1996, recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN MRA) that you be separated for misconduct due to drug abuse with a General (Under Honorable Conditions) (GEN) characterization of service. On 30 July 1996, ASN MRA approved your GEN discharge. On 2 August 1996, the Bureau of Naval Personnel directed your command take the appropriate steps to separate you with a GEN discharge. Ultimately, on 13 September 1996, you were separated from the Navy for misconduct with a GEN discharge characterization and assigned an RE-4 reentry code.

On 1 June 1998, the Naval Discharge Review Board (NDRB) denied your application for relief. The NDRB determined that your discharge was proper as issued and that no change was warranted.

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 TERA retirement with back pay, along with your contentions that: (a) you were approved for TERA when separated from active duty service but did not receive it, (b) your reduction in rank fit your error in judgment, and (c) your CO recommended you for retirement and the Adsep Board recommended retention. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or post-discharge advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board unequivocally concluded that neither your command nor the U.S. Navy committed 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 you with any opportunity for corrective action to take place, and/or to simply defer to your approved TERA request and take no administrative measures. The Board also noted that once the Adsep Board members determined you committed misconduct, that neither their subsequent retention recommendation, nor your commanding officer's endorsement, was binding on the ultimate separation authority.

Additionally, the Board noted that your NJP and subsequent administrative separation rendered you ineligible for early retirement under the TERA program criteria. Moreover, once you were reduced in rank/paygrade down to E-5 at NJP, you no longer met the eligible paygrades in your specific rating to apply for TERA.

The Board did not believe that your record was otherwise so meritorious to deserve an 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 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. The Board further 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 GEN or other than honorable 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. Moreover, the Board noted that the evidence of record did not demonstrate that you were not



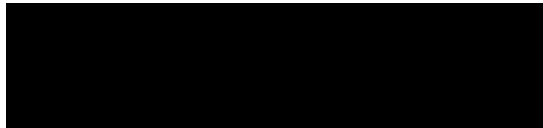
mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

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. Additionally, absent a material error or injustice, the Board declined to summarily grant your request solely for the purpose of facilitating retirement benefits, veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

4/20/2023



Executive Director

Signed by:

