



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

█
Docket No. 9272-22
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 application on 11 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 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 began a period of active duty on 30 October 2001. On 27 March 2003, you received non-judicial punishment (NJP), for unauthorized absence (UA). You were issued a counseling warning stating you were being retained in the naval service, however, the following deficiencies in your performance and or conduct as identified by your UA. On 14 May 2003, you made an admission to a medical doctor about your extensive history of experimenting with drugs prior to joining the Navy, including daily use of marijuana. You also admitted to using cocaine, psilocybin, ecstasy, methamphetamine, narcotic pain medications/opiates, Ritalin, and Xanax. In this admission you also admitted to binge drinking, loss of control, drinking to get drunk and mild withdrawal symptoms. As a result, you were notified of administrative separation processing for fraudulent entry, after which you acknowledged your rights. The Commanding Officer (CO) recommended you be discharged for fraudulent entry into the naval service and be assigned a General (Under Honorable Conditions)

(GEN) characterization. Subsequently, you were discharged on 1 July 2003 with a GEN characterization of service.

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 have your discharge upgrade and rank restored. You contend that you showed loyalty and effort during your military career, it was ruined and cut short by your direct superior, this occurred because of personal situations taking place that you were aware of, and you were treated unfairly throughout your navy career. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 NJP and admission of fraudulent enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included lying about extensive drug abuse that, more likely than not, would have been disqualifying for enlistment into the Navy. Further, the Board noted that you provided no evidence to substantiate your contentions and concluded that your discharge was proper and equitable under standards of law. Ultimately, the Board was not persuaded by your arguments of mistreatment and unjust denial of benefits based on a lack of any evidence and, most importantly, by the fact you entered the Navy fraudulently. 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 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,

1/26/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]