



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. 820-23
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 8 February 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 18 February 1981. Between 7 August 1981 and 23 August 1982, you received two non-judicial punishments (NJP) for unauthorized absences (UA) of 31 days and 5 hours, respectively. On 9 April 1983, you received your third NJP for wrongfully possession and use of marijuana. Then, on 22 June 1983, you were found guilty at special court-martial (SPCM) for wrongful possession, wrongfully distribution, and wrongful introduction of marijuana onto military installation. You were awarded confinement, forfeitures, reduction to E-1, and a Bad Conduct Discharge (BCD). After completion all levels of review, you were discharged on 30 April 1985.

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 contentions you were recommended for an Honorable discharge and was set up after three and half years of honorable

service, that the laws in the state of █ have changed and marijuana is no longer illegal, and you had heard people could use marijuana to get an Honorable discharge. Finally, you assert that you are seeking an upgrade to become eligible for your union pension fund. For purposes of clemency and equity consideration, the Board noted you provided no 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 three NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. The Board determined that drug offenses are 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 and possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board noted that your SPCM conviction included introduction and distribution of marijuana, conduct that was deemed severely detrimental to the good order and discipline of your command. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and accurately reflects your conduct during your period of service, which was terminated by your separation with a BCD. The Board found no evidence to support your contentions of being “set up” and noted you provided no evidence to substantiate your allegation. Finally, 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 your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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,

2/27/2023

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