



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

█
Docket No. 973-23
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 1 March 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.

You enlisted in the U.S. Navy and began a period of active duty on 31 October 1980. You received non-judicial punishment (NJP), on 6 February 1981, for possession of marijuana. Subsequently, you were issued a counseling warning for your deficiencies in your military behavior and advised further misconduct of discreditable nature may be grounds for administrative separation processing. You were screened for drug dependence and found not dependent on drugs. You then received your second NJP, on 24 August 1982, for wrongful use of marijuana and wrongful possession of marijuana. Subsequently, you were issued a second counseling warning, on 25 August 1982, for your misconduct. Then, on 17 November 1982, you

received your third NJP for possession of two military ID's, resisting lawful apprehension, larceny, and breaking restriction. As a result, the Commanding Officer (CO) notified you for administrative separation. You elected to have an administrative discharge board (ADB) hear your case. On 19 February 1983, the ADB found misconduct and recommended you be separated with an Other Than Honorable (OTH) characterization of service. The CO forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation and directed you be discharged. You were so discharged on 17 May 1983.

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 an upgrade in your characterization of service and contentions that you started using marijuana to mentally cope, you felt that you did not get treated fairly for being punished for gambling, and you believe the OTH was too harsh of a penalty. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, but 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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offenses. 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. Ultimately, the Board was not persuaded by your arguments of unfairness and determined that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, the Board also 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. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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, _____

3/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]