



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. 1556-23
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 8 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 Reserve on 20 September 1982. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program and a waiver was not required. You fulfilled your service obligation, on 15 July 1985, and immediately reenlisted and began active duty on 16 July 1985.

On 24 February 1986, you received non-judicial punishment (NJP) for wrongful use of marijuana. You were issued a counseling warning on 25 February 1986 for your performance and or conduct as identified by your NJP, wrongful use of marijuana and that further deficiencies in performance or conduct may result in disciplinary action and processing of administrative separation. You were screened for drug and alcohol abuse, and in the report, you were found to exhibit good potential for further naval service. On 10 June 1987, you broke restriction and began a period of unauthorized absence (UA) until you were apprehended on 26 June 1987. Subsequently, you were found guilty at general court-martial (GCM), on 9 September 1987, for desertion, breaking restriction, and larceny of \$██████████. As part of your sentence, you were awarded a Dishonorable Discharge (DD). After completion all levels of review, you were discharged on 7 June 1988.

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 racially profiled and discriminated against by your immediate supervisor, during your normal course of duties that you followed the standard operating procedures (SOP) and turned over any work funds to your supervisor, you shoved your supervisor after he called you a racial slur, days later you were placed on restriction, you decided to leave the Navy without authorization as you were constantly being picked on and punished because of the incident, and that the supervisor would not accept the funds you gave him and he gave you a direct order to keep the funds. For purposes of clemency and equity consideration, the Board noted you provided three character statements.

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 GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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 also considered the nature of your misconduct and the likely negative effect it had on the good order and discipline of your command. Further, the Board noted the inconsistencies in your contentions when compared to the misconduct for which you were charged. The Board also noted that you were afforded the required due process associated with a court-martial; rights that included representation by legal counsel and review by an appellate court. Based on these factors, the Board concluded 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 a DD. Finally, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a DD. While the Board carefully considered the evidence you provided in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your

misconduct. 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,

3/21/2023

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Executive Director
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