



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. 1570-23
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 22 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 August 1976. You received non-judicial punishment (NJP), on 19 January 1979, for leaving your appointed place of duty. You were then reported as being in an unauthorized absence (UA) status on 17 May 1979 until you returned on 18 May 1979. On 7 August 1980, you received your second NJP for five specifications of selling marijuana, and two specifications of possessing marijuana. You were issued a counseling warning after your NJP, stating that any further misconduct may result not only in disciplinary action but processing for administrative discharge. The Commanding Officer (CO) reported your drug offenses to Chief of Naval Personnel (CNP), and that he did not intend

to process you for administrative separation due to your EAOS. On 29 August 1980, you were notified and acknowledged that you were not be eligible for reenlistment due to selling marijuana onboard the ship on a regular basis during the period of March 1980 to May 1980. Subsequently, you were discharged at the end of your obligated active service, on 29 August 1980, with a General (Under Honorable Conditions) (GEN) characterization.

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 were arrested off base for a marijuana possession, made a statement to a drug counselor, the statement you made to the drug counselor was used to charge you at captain's mast, you made a mistake but feel that after four years of service, and not getting an Honorable discharge, you were treated unfairly, and you have not been in trouble since your discharge. 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 two NJPs, 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 selling marijuana to service member's and possessing marijuana 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. Further, 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 GEN. Additionally, 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. Finally, the Board 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. In reviewing your record, the Board ultimately concluded that you were fortunate to be allowed to finish your enlistment rather than face an administrative separation that likely would have resulted in an Other Than Honorable characterization of service. As a result, the Board concluded significant negative aspects of your service outweighed 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,

4/4/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]