



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. 1676-23
Ref: Signature Date

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Dear █

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 13 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 Navy and completed an honorable period of service from 12 May 1982 to 31 March 1986. You immediately reenlisted and commenced your second period of active service on 1 April 1986. On 16 April 1989, you were arrested by civil authorities and charged with possession of 98 rocks of crack/cocaine. As a result, you were directed to undergo a urinalysis by the Navy and tested positive.

On 11 September 1989, you received non-judicial punishment (NJP) for wrongful use of marijuana. On the same day, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense as evidence by

your possession of crack/cocaine as reported by civil authorities, and misconduct due to drug abuse as evidence by your positive urinalysis for marijuana. You elected your right to consult with counsel but waived a hearing of your case before an administrative discharge board (ADB). Your commanding officer subsequently recommended your separation from naval service with an Other Than Honorable (OTH) character of service. The separation authority approved the recommendation and directed your discharge by reason of misconduct drug abuse. On 27 October 1989, you were so discharged.

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 upgrade your characterization of service and contention that the Navy acted in haste to separate you before the outcome of your civilian court case. You provided evidence that you were eventually found not guilty by the State of ██████████ for cocaine possession. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined that your misconduct, as evidenced by your NJP, 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. Further, regarding your contention that the Navy acted hastily based on your civil arrest for cocaine possession, the Board considered that your separation was initiated for both commission of a serious offense, as evidence of your civil arrest, and for drug abuse, as evidence of your positive urinalysis for marijuana use. Therefore, while the Board considered the evidence you provided, they concluded your discharge was still proper based on your positive urinalysis. 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,

3/25/2023

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Executive Director

Signed by: █