



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. 1987-23

Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 May 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 this 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 United States Navy and commenced a period of active duty on 30 August 1989. On 20 November 1991, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 112(a), for wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

On 2 December 1991, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to consult with qualified counsel and to present your case at an administrative separation board. Prior to your separation, you were screened for substance abuse and it was determined that you did not meet DSM IV criteria for dependence and that you were fully accountable for your actions. You were recommended for Level II outpatient treatment. Ultimately, on 27 January 1992, you were discharged from the Navy based on "Misconduct - Drug Abuse (Use)" with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

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: (a) your desire to change your discharge characterization and narrative reason for separation; (b) your contention that this was a singular incident in an otherwise excellent record of service; and (c) your assertion that the OTH has hindered your professional and personal life in an unjust manner, but that you have succeeded post-service in spite of that, proving that you would have been a good candidate for rehabilitation and retention in the service. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, 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 that it involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members. The Board determined that a characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member.

The Board did not believe that your in-service record was otherwise so meritorious as to deserve a discharge upgrade. Further, the Board noted that while you discussed your post-service accomplishments, you did not provide evidence of such or any character letters in support of your request. 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. While the Board carefully considered the evidence you submitted 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,

5/10/2023

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Executive Director

Signed by: █