



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. 2149-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 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 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 service on 2 August 1990. Your enlistment application disclosed pre-service marijuana use. Upon entry into the service, you acknowledged the Navy's drug policy and the possible ramifications associated with continued drug use.

On 21 July 1992, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance (marijuana). You did not appeal this NJP.

On 22 July 1992, 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 your right to present your case at an administrative separation board. On 27 July 1992, you were medically evaluated for substance dependence and it was determined that the evidence "[i]ndicates service member is mixed substance abuser, chronic, strong potential

for dependency.” Ultimately, on 18 September 1992, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to: (a) your desire to upgrade your characterization of service, and change your narrative reason for separation and reenlistment code (b) your contention that you were self-medicating with marijuana due to your untreated pain connected to your service-related knee injury, (c) your contention that you should have been offered a comprehensive drug and alcohol assessment and treatment. For purposes of clemency consideration, the Board noted you provided documentation related to your post-service accomplishments.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. 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 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 found no evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board reviewed your medical records, and while they identified your service-connected injury, they felt that you received complete medical attention from the physician who determined that additional pain medication was not warranted. Further, the Board concluded that self-medication with illegal drugs is unacceptable and circumvents proper channels to obtain relief. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. Further, the Board noted that your enlistment application disclosed pre-service, pre-injury marijuana use. Upon entry into the service, you were put on notice that drug use would not be tolerated and could result in your discharge. Thus, the Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. 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.

The Board 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. While the Board commends your post-discharge accomplishments, 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,

4/17/2023

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Executive Director

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