



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. 2432-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 16 October 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, 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 Navy and began a period of active duty on 28 June 1978. On 13 June 1979, you were counseled concerning the aspects of the Navy's Drug Exemption Program. On 19 June 1979, you were diagnosed by a medical officer with psychological dependency on drugs. Subsequently, you were recommended for CAAC enrollment. On 28 June 1979, your drug exemption was denied as a result of your refusal to receive drug exemption counseling. Further, you were assigned to the Navy Drug Rehabilitation Program (NDRP) due to your refusal to receive local treatment or outpatient counseling by CAAC. On 18 September 1979, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. On 25 September 1979, you were evaluated by an NDRP medical officer and found suitable to complete your enlistment despite your minimal performance and resistance to therapy while assigned to the program. On 28 September 1979, you received a 1.0 mark on military behavior due to your disparaging lack of lack of self-discipline and your refusal to accept standards of military behavior. On 24 October 1979, you began a period of unauthorized absence (UA) which

lasted 403 days. On 27 January 1980, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to a prolonged period of UA, at which point, you decided to waive your procedural rights. On 24 February 1980, you received a second NJP for a period of UA and violating a written order. On 5 March 1981, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to your period of UA. Subsequently, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct. On 5 March 1981, 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 for a discharge upgrade and contentions that: (a) you were never convicted by court martial and were forced to take an expedited discharge, (b) the usual Navy judicial protocols were not followed, (c) the Navy DAPA diagnosed you with alcohol and drug addiction, and (d) Navy administrators lied about the type of discharge you supposed to receive. The Board also noted you checked the "PTSD" box on your application but did not respond to the Board's letter of 27 March 2023 requesting evidence to support your claim. 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 NJPs and lengthy period of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board also noted that your offenses included drug abuse offenses. 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, the Board noted you provided no evidence to substantiate your contentions. Finally, the Board determined you were already granted a large measure of clemency when the Navy chose not to court-martial you for your extended period of UA. The Board concluded that your misconduct, more likely than not, would have resulted in a punitive discharge had the Navy chosen to court-martial you for your misconduct. 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 the 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,

10/23/2023

