



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. 2714-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 10 April 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).

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 began a period of active duty in 1989. On 30 November 1989, you were counseled for poor military performance by wrongfully possessing alcoholic beverages in BEQ. You were advised that failure to take corrective action could result in administrative separation. On 16 September 1991, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) from you appointed place of duty. On 14 November 1992, you received a second NJP for a period of UA from appointed place of duty and failure to obey a lawful order. On 10 June 1993, you were honorably discharged from the Navy and immediately reenlisted.

On 21 February 1994, you received a third NJP for being drunk on duty. On 12 May 1995, you received a fourth NJP for wrongful use of a controlled substance-marijuana. As a result, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. On 23 May 1995, you decided to waive your procedural rights. On 14 June 1995, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 6 July 1995, you were UA and missed ship movement. On 31 July 1995, the separation authority approved the commanding officer's recommendation and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 10 August 1995, 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 young, immature, and a bad alcoholic who made bad decisions, (b) that you were very active in the VFW and were disqualified for a position as district commander, and (c) you would like to become active again. 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, 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, the Board considered the likely negative impact it had on the good order and discipline of your unit. Additionally, the Board noted you provided no evidence to substantiate your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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, _____ 4/25/2023



Deputy Director

