



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. 2746-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 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, 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 began a period of active service on 24 February 1977. On 12 July 1978, you commenced a period of unauthorized absence (UA) which lasted 202 days and ended in your surrender. On 30 January 1979, you were issued orders to report to █, but commenced another period of UA on 1 February 1979. On 9 August 1983, you were arrested in █ for

possession with intent to manufacture and deliver a controlled substance (heroin) and unlawful possession of a controlled substance (marijuana). You subsequently pleaded guilty to both charges and were sentenced to not less than 1.5 years but no more than five years in the ██████████. On 3 August 1984, you were notified of your pending administrative processing by reason of misconduct for conviction by civilian authorities and two specifications of desertion, at which time you elected your right to consult with counsel and to submit a statement, but waived your right to have your case heard before an administrative discharge board. Your commanding officer recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service for misconduct. On 2 November 1984, the separation authority approved the recommendation and directed you be discharged. On 13 November 1984, 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 your contentions that, during your time in the Navy, you struggled with the disease of addiction, decisions you made during this time were influenced by your drug use, and you now see that you made very bad choices and you regret them. The Board noted you checked the "Other Mental Health," box on your application but chose not to respond to the Board's request for evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you provided a Veterans Opiate Support Service Confidentiality Release Form.

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 UAs and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included drug 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. Further, the Board considered the likely discrediting effect your civilian conviction had on the Navy. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH characterization of service. While the Board carefully considered the evidence you submitted in mitigation and appreciates that you are now remorseful of your misconduct, 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 mitigating evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief. The Board noted you are in recovery and wishes you continued success.

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 is attached 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,

11/1/2023

