



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 2827-23

Ref: Signature Date



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 14 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 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 Navy and commenced a period of active duty on 24 September 1979. On 9 September 1981, you received non-judicial punishment (NJP) for failure to obey a lawful order. On 26 April 1983, you were convicted at a special court martial (SPCM) for wrongful possession of marijuana, wrongful distribution of marijuana, and wrongful use of marijuana. Following a substance abuse evaluation you were determined not drug dependent. You were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you waived your right to consult with counsel and a hearing of your case before an administrative discharge board (ADB). On 28 June 1983, your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 17 September 1983, the separation authority concurred with your commanding officer's recommendation and ordered your discharge. On 23 September 1983, 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 change your discharge characterization, narrative reason for separation, and separation code along with your contentions that you did not hide your drug use during your active service, you were harassed by your command, your discharge is unjust, and you should have been given the opportunity to complete your obligated service and receive a General (Under Honorable Conditions) discharge.

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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved multiple 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 was not persuaded by your contentions, in part, because you were punished twice for your drug use while in the Navy and your conduct included distribution of drugs. Additionally, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. Based on the seriousness of your drug offenses, the Board determined you were fortunate not to receive a punitive discharge. 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 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,

[REDACTED]

Executive Director

Signed by: [REDACTED]