



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. 2843-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 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).

You enlisted in the U.S. Navy and began a period of active duty on 24 February 1970. On 22 July 1970, you received non-judicial punishment (NJP) for wrongful possession of 'Bennies and Reds' and carrying a concealed weapon. Your Commanding Officer (CO) reported to the Chief of Naval Personnel (CNP) of your apprehension onboard the ship with drugs. CNP directed you be counseled and any further misconduct may result in disciplinary action and also administrative separation. On 6 October 1970, you were issued the counseling warning as directed by the CNP. Then, on 31 December 1970, you received your second NJP for possession of six capsules of seconol, one-day unauthorized absence, failure to muster with the crash crew and appearing on watch in a dirty uniform.

As a result, you were notified of administrative separation processing for drug abuse. You elected your right to consult with counsel and a hearing before an administrative board. However, on 5 January 1971, through military counsel, you submitted a statement and waived

your right to have your case heard before an administrative board. The CO made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged. You were so discharged on 27 January 1971.

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 contention that you were told at the time of discharge that after six months it could be upgraded to Honorable. The Board noted you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence of 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact 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. Additionally, the Board noted that you were given an opportunity to rehabilitate your conduct after your first drug related offense but committed another drug offense. Furthermore, the Board also 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. Finally, the Board noted you provided no evidence to substantiate your contentions. 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,

11/2/2023

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