



**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. 3386-23

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 1 May 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).

On 12 November 2002, you enlisted in the Navy and began a period of active duty. During a Personnel Reliability Program interview, you disclosed pre-service drug abuse of marijuana. On 9 May 2003, your Commanding Officer (CO) requested a defective enlistment waiver for you as a result of your failure to disclose your prior history of marijuana use, and other infractions, to include: possession and taking prescription medication prescribed to your parents, theft of \$70.00 from your mother's purse, and four (4) offenses of driving without a driver's license. You also disclosed having been placed into court directed counseling/rehabilitation, juvenile detention, and home detention. At the time, you asserted that you provided this history to your recruiter but was told not to tell anyone else. On 28 May 2003, you were granted a fraudulent enlistment waiver. On 29 May 2003, you were issued administrative remarks retaining you in the naval service despite your defective enlistment, disqualifying you for duty in submarines, and advising you that further deficiencies in your performance and/or conduct could result in an administrative separation under Other Than Honorable (OTH) conditions.

On 29 June 2003, you reported to █. On 23 July 2003, you received nonjudicial punishment (NJP) for the wrongful use of a controlled substance.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 14 August 2003 with an OTH characterization of service, your narrative reason for separation is "Misconduct Due To Drug Abuse," your separation code is "HKK," and your reenlistment code is "RE-4."

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 discharge and your contention that you were told six (6) months post-discharge your OTH characterization would automatically be upgraded to a General (Under Honorable Conditions). For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After a 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, 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. Additionally, you are advised that there is no provision in law or regulation that allows for recharacterization automatically after six (6) months or due solely to the passage of time. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. The Board found that your misconduct was intentional and made you unsuitable for continued service. Lastly, the Board considered that you already received a large measure of clemency when you were granted a fraudulent enlistment waiver and warned that further misconduct could result in an OTH 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 warrant 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 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,

5/10/2023

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Executive Director

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