



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

█  
Docket No. 4275-23  
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 reconsideration application on 9 June 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 Navy and entered active duty on 12 February 1996. Your pre-enlistment physical, on 28 April 1995, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

On 27 June 2000, pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) of two separate specifications of the wrongful distribution of a controlled substance (marijuana) on or about February 1999 and July 1999, respectively. You were sentenced to thirty days of confinement, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 17 July 2002, the Navy-Marine Corps Court of Criminal Appeals concluded that the SPCM findings and sentence were legally and factually correct and that no error materially prejudicial to your substantial rights was committed. Upon the completion of appellate review in your case, on

30 October 2002 you were discharged from the Navy with a BCD and assigned an RE-4 reentry code. You previously applied to this Board for relief and were denied on 21 May 2021.

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) your BCD does not accurately reflect your service record but does negatively view the potential that you were capable of achieving, (b) you were close to reenlisting and attaining higher rank of E-5 all while pregnant with your first child, (c) you were guilty of a bad friendship choice, (d) when you were identified as knowing a drug dealer others assumed you were guilty also, (e) you never failed drug tests and only the weight of repeated interrogations did you admit to something you did not do, (f) you are proud of your Navy service and sincerely wanted a full career, and (g) you have exemplary post-service conduct. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters that described post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board determined that there was no credible and convincing evidence in the record to indicate that you were wrongfully charged with distributing marijuana. The Board noted that you pleaded guilty to both of your charged drug distribution offenses. The Board further noted that a plea of guilty is the strongest form of proof known to the law. Based upon your pleas of guilty alone and without receiving any evidence in the case, a court-martial can find you guilty of the offenses to which you pleaded guilty. The Board noted that during a SPCM guilty plea such as yours, the Military Judge (MJ) will only accept your guilty plea once they were satisfied that you fully understood the meaning and effect of your guilty plea, and only after determining that your plea was made voluntarily, of your own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had you state on the record that discussed every aspect of your case including the evidence against you and possible defenses and motions in detail with your lawyer, and that you were satisfied with your counsel's advice. Further, the MJ would have also had you state on the record that you were pleading guilty because you felt in your own mind that you were guilty. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in your case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no



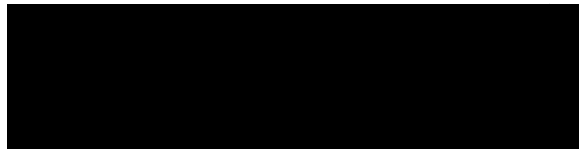
substantive, evidentiary, or procedural defects were identified in your case. In the end, the Board concluded that any such suggestion or argument that you did not commit the offenses to which you pleaded guilty was not persuasive and without merit.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious drug-related misconduct. The Board determined that illegal drug use and/or distribution by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that marijuana possession, distribution, and use in any form is still against Department of Defense regulations and such use not permitted for recreational use while serving in the military. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. 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,

6/13/2023



Executive Director

Signed by:

