



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. 5166-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 December 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You had a pre-service disciplinary history of multiple arrests for possession of marijuana, theft, grand theft, burglary, and providing false information, for which you received a moral waiver. You also were advised against enlisting prior to graduating high school but elected to enlist. You therefore enlisted in the Navy and began a period of active duty on 12 May 1981. On 19 February 1982, you were administratively counseled and warned regarding a violation of the Uniform Code of Military Justice (UCMJ) under Article 92. Shortly thereafter, on 1 March 1982, you were subject to nonjudicial punishment (NJP) for violations under Article 90 due to willfully disobeying an order to remain aboard and Article 134 for wrongfully altering your identification card with the intent to deceive. You were again counseled, in July 1982, regarding low performance marks with a comment that you had been "on the down swing" and appeared resentful when assigned tasks which were not to your liking.

On 18 November 1982, your record documented that you had been convicted of a civil offense of driving under the influence and were ordered to attend an alcohol safety program in lieu of confinement. Your command was notified in February 1983 that you failed to attend the

required alcohol safety classes. Therefore, on 22 March 1983, you were advised by the ██████████ Center ██████████) that you were required to participate in a supervised Antabuse program, to attend Alcoholics Anonymous, and to receive counseling. On 20 April 1983, the Navy Alcohol Safety Action Program confirmed that you had completed the required alcohol safety course. However, that same day, your command received a message from the ██████████ Drug Lab reported that your urine sample had been positive for marijuana metabolites. You subsequently absented yourself without authority from 14 - 16 May 1983. Upon your voluntary return to military control, you received a second NJP for multiple offenses, to include a violation under Article 86, for your unauthorized absence (UA), five specifications of Article 92 due to dereliction of duty, failure to obey a lawful order, possession of drug paraphernalia, possession of knives with blades longer than permitted by regulation, and possession of a 22 inch black baton, and two specifications of Article 134 for use and possession of marijuana. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and requested a hearing before an administrative separation board. You also submitted a written statement acknowledging your deficiencies in conduct and performance but expressing your desire for retention to have an opportunity to show that you could turn yourself around. Ultimately, the administrative separation board members found that the basis for separation was supported by a preponderance of the evidence and recommended that you be separated under Other Than Honorable (OTH) conditions. Your administrative separation was subsequently routed for review and approval and you were so discharged on 29 July 1983.

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 to General (Under Honorable Conditions) in order to seek medical assistance from the Department of Veterans Affairs (VA) and your contentions that you suffered from untreated mental illness since childhood which requires medical care. The Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 22 June 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide 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. 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. Further, the Board also noted that you did not submit any supporting records regarding your contended mental illness with respect to diagnosis, onset of symptoms, service connection or aggravation, or post-discharge treatment, nor did you submit any evidence for consideration of clemency. Further, the Board considered that you had a significant disciplinary history prior to entering active duty, which appears to have continued into your military service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 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,

1/9/2024

