



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

█
Docket No. 6165-23
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 16 February 2024. 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 1976. Between 18 March 1977 to 11 August 1978, you received non-judicial punishment (NJP) on six occasions for unauthorized absence (UA) on ten occasions, four specifications of possession of hashish/barbiturates, possession of amphetamines, three specifications of failure to obey a lawful order, and possession of an altered military ID card.

On 12 October 1978, you were convicted at a special court martial (SPCM) for theft of a portable tape deck, concealing a felony. On 5 September 1979, you received NJP for willful disobedience of a superior commissioned officer. Later, you received two civil convictions for petty larceny, driving while on a suspended license, and failure to pay fines. On 28 November 1979, you received your eighth NJP for five specifications of UA.

You subsequently received your second SPCM, on 29 March 1982, for three specifications of UA. You were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). The convening authority approved and affirmed your sentence. After completion of all levels of review, on 5 January 1984, you were separated with a BCD as a result of your court martial conviction.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 14 April 1986, after concluding your discharge was proper as issued.

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 characterization of service and contentions that your record indicates you were discharged with a Dishonorable Discharge instead of a BCD, and you were suffering from a mental health condition due to the passing of your parents. The Board noted you checked the "Other Mental Health" box on your application but chose not to 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 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 and SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board considered your misconduct included multiple drug related 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. Finally, the Board noted you provided no evidence, other than your personal statement, 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 other than honorable 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.

Regarding your contention that your record reflects a Dishonorable Discharge, the Board found no evidence to support this contention. As discussed above, your record reflects you were discharged with a BCD and this fact is documented on your DD Form 214.

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,

3/5/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]