



**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. 6973-23  
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 8 September 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You previously applied to this Board a discharge upgrade and were denied on 8 February 2000.

You enlisted in the Navy and began a period of active duty on 18 October 1978. You accepted an initial nonjudicial punishment (NJP), on 30 May 1979, for a violation of the Uniformed Code of Military Justice (UCMJ) under Article 86 due to failure to go to your appointed place of duty at the prescribed time. You were tried by Special Court-Martial (SPCM), on 23 January 1980, and convicted of 14 total offenses that included two specifications under Article 86 for failure to go, with an additional four specifications under Article 86 for unauthorized absence (UA), six specifications under Article 121 for offenses of wrongful appropriation and theft, a single violation of Article 130 for unlawfully breaking into a government building with the intent to commit larceny, and a single violation under Article 134 for unlawfully carrying a concealed

weapon. Your adjudged sentence included a Bad Conduct Discharge (BCD) which was suspended for a period of 6 months. During the suspension period, you were subject to a second nonjudicial punishment, on 23 May 1980, for two more specifications of violating Article 86 by failure to go to your appointed place of duty and five specifications of Article 91 for disobeying the lawful orders of a superior petty officer. However, no immediate action was taken to vacate your suspended BCD.

On 12 June 1980, you were administratively counseled that continuation of your past performance could ultimately result in processing you for an undesirable discharge. The following day, you received a third NJP for five specifications under Article 86 for failure to go with an additional specification for UA. You then accepted a fourth NJP, on 27 July 1980, for a violation under Article 91 for disobeying the lawful order of a superior. As a result of your continued misconduct, you were administrative counseled that a hearing would be held to consider vacating your suspended BCD. Subsequently, you received three additional NJPs, on 28 May 1981, 3 April 1982, and 25 February 1983, for respective offenses under Article 86 for absence without authority, Article 92 for violating a lawful general regulation by wrongfully possessing hashish, and an unspecified article for knowingly and wrongfully using marijuana. Following your NJP for your second drug-related offense, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and, with the exception of submitting a statement, waived all other relevant rights.

Your statement in response to the drug abuse basis for separation asserted that you had been unconcerned about the unit sweep for drug testing because you did not smoke marijuana, that you asked for additional testing, and that you believed your positive test resulted from someone else's mistake. However, the message submitted to Commander, █, █, requesting your discharge under Other Than Honorable (OTH) conditions pointed out that you were two-time drug offender; a fact which, combined with your past record, offered little potential for future service. █ approved your administrative separation, and you were discharged on 1 April 1983 with an OTH characterization.

On reconsideration, 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 "Honorable" and your contention that you were "discharged under a policy that was not yet truly in place Navy-wide" but has since changed. Based on your belief regarding this unspecified policy, you also assert that you would have received a different discharge if "these errors" had not been made. 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 SPCM, 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. The Board noted that you did not clarify which policy you referenced in your application or how that policy affected your discharge. Regardless, the Board noted that you were sentenced to a BCD which was not only suspended but, to your significant benefit, not vacated even after you committed multiple additional offenses. Therefore, the Board determined you already received a large measure of clemency

when you were administratively separated in lieu of receiving a BCD. Your records also reflect that you committed two drug-related offenses prior to your administrative separation on that basis. 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. 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,

9/26/2023

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