



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. 7024-23

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 13 November 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 12 October 1982. On 27 September 1984, you received nonjudicial punishment (NJP) for wrongful possession of marijuana and drug paraphernalia. Afterwards, you were counseled concerning wrongful possession of marijuana, drug paraphernalia, and been in possession of two military identification cards. You were advised that failure to take corrective action could result in administrative separation. On 2 November 1984, you were convicted by summary court martial (SCM) for larceny and disobeying a lawful order. You were sentenced to reduction to the inferior grade of E-1, restriction for a period of 15 days, and forfeiture of pay in the amount of two thirds per pay

period for one month. On 16 May 1987, you began a period of unauthorized absence (UA) which lasted 3 hours and 25 minutes. On 23 May 1987, you were counseled for a period of UA and advised that failure to take corrective action could result in administrative separation. Between 27 August 1987 to 14 July 1988, you received four NJPs for contempt towards a petty officer, three instances of disobeying a lawful order, one instance of using provoking speeches and gestures, two instances of communicating a threat, gambling with subordinates, assault, breach of peace, indecent exposure, disorderly conduct and drunkenness, disrespect towards a superior petty officer, and failure to go to your appointed place of duty. On 12 August 1988, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and later waived your procedural rights. Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 4 September 1988, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 9 September 1988, you were so discharged.

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) you served honorably in the Army National Guard, (b) you are a veteran with several six month deployments, three sea service deployments, Battle Efficiency awards, and two Meritorious Unit Commendations, (c) you are the proud father of five young adults and now a grandparent, and (d) you are a tax payer and voter. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related 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. Further, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Lastly, the Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. 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 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,

