

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 7171-23 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 application on 23 October 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 7 August 1997. On 29 September 1997, you admitted to daily use of marijuana since 1994, using cocaine once in 1990, taking hallucinogens twice in 1991, and attending a three-week rehabilitation program in 1995; all of which you had not previously disclosed on your application for enlistment. You were screened for drug dependency, diagnosed with chronic cannabis dependence, and recommended for discharge based on erroneous enlistment. Subsequently, you were notified of pending administrative separation processing with an Entry Level Separation due to defective enlistment and induction due to erroneous enlistment. Ultimately, you were discharged, on 7 October 1997, with an uncharacterized Entry Level Separation.

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 void your enlistment due to erroneous entry based on your drug dependency and your contention that you were unable to defense yourself against "the errors" at the time. For purposes of clemency and equity consideration, the Board noted you provided no evidence in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned narrative reason for separation remains appropriate based on your undisclosed drug abuse and resulting erroneous enlistment in the Navy. The Board found no basis to void your enlistment based on your drug dependency and determined that your assigned narrative reason for separation was the most appropriate narrative reason based on the circumstances of your case. Therefore, 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.

