



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. 7207-23
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 reconsideration application on 6 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 U.S. Navy and began a period of active duty service on 12 April 1979. Your pre-enlistment physical examination, on 10 January 1979, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 13 June 1979, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 20 June 1979, you received NJP

for three separate specifications of breaking restriction. You did not appeal your NJP. On 26 June 1979, your command issued you a "Page 13" retention warning (Page 13). The Page 13 expressly warned you that any further misconduct may result not only in disciplinary action but in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 25 July 1979, you received NJP for failing to obey a lawful order, larceny, and for not having your ID card on your person. You did not appeal your NJP. On 14 November 1979, you received NJP for failing to obey a lawful order. On 17 December 1979, you commenced a period of UA that terminated after forty-two (42) days on 28 January 1980. On 8 February 1980, you received NJP for your 42-day UA. On 18 February 1980, you received NJP for failing to obey a lawful order and also for falling asleep on watch. You did not appeal your NJP. On 11 March 1980, your command issued you a Page 13. The Page 13 expressly warned you that any future infractions will result in processing for an administrative discharge for misconduct under other than honorable conditions. You did not submit a Page 13 rebuttal statement.

On 26 September 1980, you received NJP for UA. You did not appeal your UA. On 21 March 1981, you received NJP for two separate UA specifications, failing to obey a lawful general order by possessing marijuana, and for wrongfully communicating a threat. You did not appeal your NJP. On 16 June 1981, you received NJP for failing to obey a lawful general order by again possessing marijuana. You did not appeal your NJP.

On 4 January 1982, you commenced a period of UA that terminated after seventeen (17) days on 21 January 1982. On 18 March 1982, you received NJP for your 17-day UA and for insubordinate conduct. You did not appeal your NJP.

On 23 April 1982, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 4 May 1982, your command notified you of administrative separation proceedings by reason of misconduct due to frequent involvement of a discreditable nature with civil and military authorities (aka a pattern of misconduct). You expressly waived in writing your rights to consult with counsel and to request an administrative separation board. Ultimately, on 15 May 1982, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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) your discharge was determined due to possession of marijuana, and (b) you enlisted in the Navy and served onboard two different ships. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your

conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug possession and/or use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana possession is still against Department of Defense regulations and its use in any form is still not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your cumulative pattern of misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.2 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct totaling ten (10) NJPs was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, which all further justified your OTH characterization.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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.

Sincerely,

10/11/2023

