



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

█
Docket No. 7275-23

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 22 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 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 16 March 1993. Your enlistment physical examination, on 12 March 1993, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. You received an enlistment drug waiver for pre-service cocaine usage, and you also disclosed pre-service marijuana use on your enlistment application.

On 6 March 1997, you were convicted in a █ Court for two counts of misdemeanor battery. On 7 April 1998, you were convicted in a █

Court for a misdemeanor under the influence of drugs charge.

On 21 June 1998, you were arrested by ██████████ Police on suspicion of two counts of felony domestic violence. You remained in civilian custody until your trial which meant that every day you were in civilian custody you were in an unauthorized absence (UA) status day-for-day. On 8 July 1998, you were convicted in the Municipal Court of ██████████ County of ██████████ of two felony counts of corporal injury to a spouse.

On 21 July 1998, you were notified of administrative separation proceedings by reason of misconduct due to a civilian conviction, misconduct due to the commission of a serious offense, and misconduct due to drug abuse. You consulted with counsel and elected your right to a hearing before an administrative separation board (Adsep Board).

On 11 August 1998, an Adsep Board convened in your case. Following the presentation of evidence and witness testimony, the Adsep Board members determined by majority vote that the preponderance of the evidence presented proved you committed the misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members recommended by majority vote that you separated with an under Other Than Honorable conditions (OTH) characterization of service.

You returned to military control following your release from civilian incarceration on or about 18 September 1998. Your total days in a UA status while in civilian custody totaled approximately eighty-nine (89) days. Ultimately, on 3 November 1998, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 6 June 2000, the Naval Discharge Review Board denied your initial discharge upgrade application. On 22 October 2014, this Board denied your petition for relief. On 20 August 2018, this Board again denied your discharge upgrade petition.

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 were incarcerated for charges that weren't true involving your spouse, (b) while fighting such charges you were discharged with an OTH, (c) three months after being arrested all charges were dropped, (d) due to this erroneous arrest your discharge should reflect honorable service, (e) you have suffered mentally from your OTH, (f) you have been homeless and your health has tremendously declined, and (g) it has been very hard for you to get good employment with the scar of an OTH on your military record. The Board noted you checked the "PTSD" box on your application but did not provide any supporting evidence of your condition or explanation on how it may be related to your request. 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. First and foremost, the Board determined that any contentions regarding any

charges against you being dropped/dismissed were without merit. The Board observed that the record reflected that you have three (3) separate convictions over a sixteen (16) month period of time. The Board noted that the documentation you submitted, evidencing a dismissal in May 1997, did not relate to any of your previous convictions, two of which occurred in 1998.

The Board did not believe that your record was otherwise so meritorious to deserve an 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 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 egregious 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. Therefore, 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,

9/27/2023

