



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. 7545-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 29 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).

You enlisted in the U.S. Navy and began a period of active duty service on 13 January 1980. Your pre-enlistment physical examination, on 5 December 1979, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 12 May 1980, you received non-judicial punishment (NJP) for destruction of government property, a breach of the peace, and for provoking speeches and gestures. You did not appeal your NJP. On 3 June 1980, you were dropped from your guaranteed "A" School for academic reasons.

On 11 August 1981, you received NJP for two separate specifications of failing to obey a lawful

order, and insubordinate conduct. On 3 September 1981, you received NJP for two separate specifications of unauthorized absence, and for failing to obey a lawful order. You did not appeal your NJP.

On 21 September 1981, your command issued you a "Page 13" retention warning (Page 13). The Page 13 expressly warned you that any further misconduct may result in not only disciplinary action, but in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 7 April 1982, you received NJP for the wrongful use of marijuana. You did not appeal your NJP. On 12 May 1982, you received NJP for the wrongful use of phencyclidine (aka PCP or "ecstasy"). You did not appeal your fifth and final NJP.

Following your second drug offense, your command sent you to inpatient drug rehabilitation treatment at ██████████). However, you were terminated from the treatment program early due to your unsatisfactory performance. The ██████████ message sent to your command on 26 July 1982 stated the following:

SNM has performed unsatisfactorily during treatment. Because of SNM's lack of progress in treatment, poor prior discipline record and unwillingness to work on his problem areas, it is likely he will continue his drug usage. He is not drug dependent, but his use of drugs is viewed as a chosen lifestyle. He will continue to be an admin burden. Recommend Admin Discharge IAW MILPERSMAN...SNM will be returned (POV) on or about 26JUL82.

On 9 August 1982, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You expressly waived in writing your right to request an administrative separation board. In the interim, your separation physical examination, on 1 September 1982, did not note any psychiatric or neurologic issues or symptoms. Ultimately, on 16 September 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 change to your narrative reason for separation. You contend that: (a) the Navy made an error of discretion related to your discharge, (b) your discharge from the NDRB was because of a comment on the potential use of marijuana outside of military service, (c) you participated in urinalyses throughout the ██████████ program and not once tested positive, (d) you should have been allowed more than fifty-two (52) days of NRDC treatment before being recommended for discharge, (e) your discharge for drug abuse in an error of discretion due to the inconclusive nature of your rehabilitation treatment, (f) it is materially unjust you were discharged with a harmful and stigmatizing OTH, (g) you should receive an upgrade to correct this injustice and to reflect your continued adherence to the values of the U.S. Navy, (h) you endured an error of discretion when not given a due time in rehabilitation to make significant improvement, (i) you continue to

display character and values in keeping with dutiful service in the Navy despite the harm on your honor and good name from your OTH, and (j) you are petitioning the Board to remove this indelible stain of an OTH from your military records to restore your honor and good name. 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 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 also noted that marijuana use in any form is still against current Department of Defense regulations and 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 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 was not persuaded by your argument that the Navy somehow erred by terminating your ██████████ treatment early and did not give you enough time to make significant improvement prior to processing you for separation. The Board noted that your service record indicated you reported for treatment at ██████████ C beginning on 4 June 1982. This would have meant that on the day you were discharged from ██████████ on 26 July 1982 you would have been on "Day 53" of treatment, more than enough time to show at least some modicum of progress and improvement. Contrary to your contention, the Board determined that ██████████ did not discontinue your rehabilitation treatment based on one isolated comment about possible post-service drug use. It was clear to the Board that your treatment instead ended due to your overall unsatisfactory performance during treatment, your lack of progress, your unwillingness to work on your progress areas, and the likelihood you would continue your drug usage despite undergoing treatment. After reviewing the evidence, the Board determined the Navy was more than justified in terminating your drug rehabilitation treatment prior to completion because it was certain that you were not amenable to treatment or rehabilitation.

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 2.85 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 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.

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,

10/6/2023

