



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. 7744-23
Ref: Signature Date



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 6 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).

You enlisted in the Navy and began a period of active duty on 30 October 2003. Prior to your enlistment, you were administratively separated from the Delayed Entry Program (DEP) due to moral disqualification. Subsequently, you were given a waiver. On 27 March 2006, you tested positive to wrongful use of a controlled substance-marijuana. On 28 March 2006, you admitted the purchase and use of \$10.00 worth of marijuana. On 1 May 2006, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. On the same date, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. On 3 May 2006, a medical officer determined that you met the criteria for a substance abuse disorder. On 30 May 2006, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 31 May 2006, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 3 June 2006, you were so discharged.

On 15 October 2009, this Board denied your previous request for a discharge characterization upgrade.

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 erroneously identified as a drug user; (b) you were suffering from deep depression while in service; (c) you wanted to build a military career and one mistake ruined everything; (d) the Navy did not provide any kind of support for your drug related issues. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 20 September 2023 letter requesting supporting evidence for your claim. 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 NJP, 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 likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contentions. 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,

11/24/2023

