



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. 8683-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 30 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.

On 12 August 1969, you enlisted in the Navy and began a period of active service. On 18 September 1970, an ABH1/E-6 provided a statement to Naval Investigative Service (NIS) Special Agents admitting to purchasing marijuana from you on two occasions adding, "he said he could fix me up with marijuana most anytime and that he could connect me with some dope pushers in █, █ and some fellows located aboard █, █." On 13 November 1970, you admitted to smoking and using marijuana for approximately three years and stated you became involved with marijuana within two weeks after being assigned to █, █. You also claimed irregular use of marijuana since May 1970; only

when you could afford to purchase some and if some of your friends provided you with a joint or two of marijuana. You further admitted to selling marijuana on one occasion and having transferred marijuana on other occasions. On 14 April 1971, you were found guilty at a general court-martial (GCM) of wrongfully selling marijuana and were sentenced to confinement at hard labor for five months, forfeiture of 2/3 pay per month for five months, and to be reduced in rank to E-1. On 5 November 1971, you were evaluated and diagnosed as mildly drug dependent. You were subsequently notified of your pending administrative processing by reason of misconduct for unfitness due to the sale of dangerous drugs, at which time you waived consulted with counsel and waived your right to have your case heard before an administrative discharge board. On 30 November 1971, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service by reason of Unfitness.

You were previously denied relief by the Discharge Review Program (Special) on 15 June 1977.

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 upgrade your characterization of service and your contentions that: (1) you were separated for a small amount of marijuana, (2) racial discrimination was a factor in your separation as your Commanding Officer exhibited racial discrimination towards you and others on multiple occasions, (3) your punishment was severe, unjust, and disproportionate to that of Caucasian counterparts, (4) you were the only black member in your squadron, (5) "he [Commanding Officer] would call me 'boy' or accuse me of stealing my vehicle because it was nice," (6) you did not have any marijuana in your possession, (7) you were set-up when a non-sterile community vacuum used by you and others to clean your vehicles was used to obtain a sample to prove you had possessed marijuana, and (8) you heard, "President Biden reference military personnel who were discharged for possessing a small amount of marijuana [can] have their discharges upgraded to honorable." For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214 and a copy of the Presidential Proclamation Granting Pardon for the Offense of Simple Possession of Marijuana.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined that illegal drug involvement by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses and unnecessary risk to the safety of their fellow service members. The Board noted marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board was not persuaded by your arguments of racial discrimination and unfair treatment; noting that you admitted to abusing and selling marijuana. The Board also noted that you provided no evidence to substantiate your contentions and were fortunate to receive a GEN characterization of service. Finally, the Board noted that you were convicted of selling marijuana and not simple possession. Therefore, the Board determined the Presidential proclamation you cite was not applicable in your case. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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 is attached 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,

11/21/2023

