



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

██████████
Docket No. 8868-23
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 case 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 to 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 11 April 2000. On 3 January 2003, you were subject to nonjudicial punishment (NJP) for a violation of Uniform Code of Military Justice under Article 112a for wrongful use and possession of a controlled substance. You appealed this NJP as unjust due to your professed lack of guilt and lack of evidence; you also noted that your accusers were pending charges, not credible, and not available for you to confront them. Your appeal was denied on 6 February 2003.

Subsequently, you were notified of administrative separation processing for drug abuse. You requested a hearing before an administrative separation board and were represented by detailed military counsel at the hearing. At the hearing, the government presented evidenced of multiple witness statements describing, in detail, your involvement with illegal drugs, to include your expressed interest in potentially becoming involved in distribution. Upon review of the evidence, the administrative separation board unanimously found that the basis was substantiated by a preponderance of the evidence and recommended your separation under Other Than Honorable (OTH) conditions. Your military defense counsel submitted a lengthy and detailed

letter outlining the deficiencies you alleged with the proceedings, which was subject to legal review. On 21 April 2003, Commander Submarine Forces U.S. ██████████ Fleet approved your recommended separation and, in addressing the issues raised by the letter of deficiency, found them to be without merit with respect to the validity and fairness of your hearing. Therefore, you were discharged under OTH conditions on 29 May 2003.

Your previous application to the Naval Discharge Review Board (NDRB) was considered on 20 July 2004, wherein you likewise maintained that you were not guilty of the offense and had been denied a fair trial to confront your accusers. The NDRB denied your application after determining your discharge was proper as issued.

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 discharge and your continued contention that you were not guilty of the offense for which you were separated. You point to the fact that you never failed a urinalysis and were never found in possession of drugs whereas all of the evidence against you was based upon hearsay and you were denied your request for trial by court-martial. You further allege that your executive officer (XO) told you that they did not have enough evidence to convict you. For purposes of clemency and equity consideration, the Board noted you did not provide 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 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. Further, the Board concurred in relevant part with the analysis set forth in the NDRB's decision. The Board found that you were afforded all appropriate due process with respect to the administrative proceedings of both your NJP and your administrative board hearing, as well as a thorough review of your contended deficiencies. The Board found no evidence of impropriety, injustice, or procedural irregularity in your NJP or separation proceeding. Rather, and notwithstanding your claim that your XO disclosed his belief that the evidence against you was insufficient for trial, the Board observed ample corroborating evidence in the statements made regarding your involvement with illegal drugs to substantiate the basis of misconduct by a preponderance of the evidence. 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 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

