



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. 9008-23
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 application on 29 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, 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 Navy and began a period of active duty on 3 June 1991. On 28 April 1992, you received an administrative remarks (Page 13) counseling concerning your Booker Rights, you were advised that you were pending non-judicial punishment (NJP) for the following offenses: Article 86, Unauthorized absence (UA) from 24 March 1992 to 16 April 1992, and Article 112a, Wrongful use of marijuana on 17 April 1992. On 16 June 1992, you commenced a period of UA that concluded upon your return to military authorities on 29 June 1992, a period totaling 13 days. On 2 September 1992, you commenced another period of UA that concluded upon your return to military authorities on 15 September 1992, a period totaling 13 days.

On 28 October 1992, a special court-martial (SPCM) was held in your case. This fact is documented in your enlisted performance record. Additionally, your history of assignments document that you were transferred to the █ on 3 November 1992, presumably after you were placed on appellate leave while awaiting appellate review of your punitive discharge.

Unfortunately, documents pertinent to your SPCM proceedings are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy, on 24 August 1993, with a “Bad Conduct Discharge (BCD)” characterization of service, your narrative reason for separation is “Conviction By Special Court-Martial,” your reenlistment code is “RE-4,” and your separation code is “JJD-901,” which corresponds to court-martial (other).

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 change your discharge character of service to General (Under Honorable Conditions) and contention that there is no in-service documentation of your SPCM conviction. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your periods of UA and SPCM conviction, 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. 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. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board found that the record clearly reflected that your active duty misconduct was intentional and willful. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Ultimately, after relying on the presumption of regularity, the Board concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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,

12/15/2023

