



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. 9035-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 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 this 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 commenced a period of active duty on 12 September 1978. You received non-judicial punishment (NJP), on 13 March 1981, for possession of 7 grams of Hashish, and selling about 1 gram of Hashish on board █. On 18 March 1981, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to drug abuse. Subsequently, you elected your right to consult with counsel, and waived a hearing of your case before an Administrative Discharge Board (ADB). Your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service. Prior to your discharge, you were awaiting adjudication of violation of five articles of the Uniformed Code of Military Justice (UCMJ). However, the separation authority approved and directed your discharge with an OTH character of service by reason of misconduct due to drug abuse. Subsequently, the pending charges were dropped and you were discharged as directed on 4 June 1981.

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 characterization to allow you to receive Department of Veterans Affairs (VA) benefits and your contention that your charges were dropped due to lack of evidence. For purposes of clemency and equity consideration, the Board noted you provided a VA decision document but no 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 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 distribution 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 noted your offense of selling hashish was further aggravating since it occurred onboard a naval vessel. Additionally, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. The Board was not persuaded by your contentions regarding your dismissed charges and noted that you were properly discharged based on your drug offenses that were adjudicated via NJP. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 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,

11/27/2023

