



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

■
Docket No. 9202-23
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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 21 September 2000. Upon your enlistment, you admitted the use of a controlled substance-marijuana. On 30 July 2004, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) and wrongful use of a controlled substance. On 8 October 2004, the separation authority approved and ordered an Other Than Honorable discharge characterization of service by reason of misconduct due to drug abuse. On 12 October 2004, you were so discharged with an "RE-4" reentry code.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On

1 March 2006, based on their decision that you were improperly retained on active duty beyond your end of active obligated service (EAOS) date, the NDRB approved an upgrade to your characterization of service from "Other Than Honorable" to "Honorable," separation code from "HKK" to "JBK," and narrative separation from "Misconduct" to "Completion of Active Duty Service." However, the NDRB chose not to change your reentry code from "RE-4."

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 reentry code and contentions that: (a) the NDRB is authorized to upgrade to your reentry code if related to a change in characterization or narrative, and (b) you only requested a change to your character of service and narrative and later discovered that you could have your reentry code corrected. For purposes of clemency consideration, the Board noted you did provide copies of your NDRB proceedings, NPC notification letter, and a copy of your new Certificate of Release or Discharge from Active Duty (DD Form 214).

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 were granted an upgrade by the NDRB based on a finding that you were improperly retained on active duty past your EAOS. In the Board's opinion, the NDRB decision did not excuse or mitigate your misconduct. Therefore, the Board determined, based on your misconduct, you were unsuitable for further military service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an "RE-4" reentry code. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

