



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. 9585-23

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 20 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).

You enlisted in the Navy and began a period of active duty on 31 October 2000. Upon your enlistment, you admitted pre-service use of a controlled substance-marijuana. On 11 April 2001, you received nonjudicial punishment (NJP) for wrongful possession of a controlled substance-marijuana. Subsequently, you were convicted by SPCM, at which point, you were found guilty and sentenced to a Bad Conduct Discharge (BCD). On 21 January 2004, your SPCM sentence was approved. On 29 April 2004, you were discharged from the Navy with a BCD characterization by reason of SPCM conviction.

Unfortunately, the documents pertinent to your separation 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from

the Navy on 29 April 2004 with a BCD characterization of service, your narrative reason for separation is "Court Martial" your separation code is "JJD/901," and your reenlistment code is "RE-4." Your separation code is consistent with a discharge due to SPCM conviction.

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 for a discharge upgrade and contention that: (a) you did not recollect all the events and charges you agreed to, (b) you were incarcerated for three months and isolated due to your charges and were under extreme external problems, (b) you lost your child and did not fought the charges as you just wanted to go, (c) what hurt you the most was that you lied about your involvement during the incident when you were not part of it, (d) you did not received proper due process and you just wanted to go home, and (e) you felt worn out and paranoid about agreeing and signing what was offered to you without knowing the stigma, regret, and shame that was brought to you over the years. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board noted you provided no evidence to substantiate your contentions. Finally, the Board noted, if your contentions are to be believed, you made a false official statement and/or committed perjury as part of your SPCM. 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 characterization. Even in light of the Wilkie Memo and reviewing the record liberally and 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

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,

12/7/2023

