



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

█
Docket No. 9798-23

Ref: Signature Date



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 reconsideration application on 9 February 2024. 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 U.S. Navy and began a period of active duty service on 2 December 1977. Your pre-enlistment physical examination, on 25 October 1975, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 22 February 1978, you received non-judicial punishment (NJP) for the wrongful possession of marijuana. You did not appeal your NJP. On 8 April 1978, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On 31 August 1978, you commenced a UA that terminated with your arrest in █ on 5 September 1978. On 8 September 1978, you received NJP for your five-day UA. You did not appeal your NJP. On the same day, your command issued you a "Page 13" counseling warning (Page 13). The Page 13 expressly warned you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge.

On 20 September 1978, you received NJP for two separated UA specifications. You did not appeal your NJP. On 2 November 1978, you commenced another UA that terminated after four (4) days on 6 November 1978. In the interim, you received NJP for another two separate UA specifications. You did not appeal your NJP. On 12 January 1979, you received NJP for your 4-day UA. You did not appeal your NJP.

On 3 February 1979, you commenced another UA. On 1 March 1979, your command declared you to be a deserter. Your UA terminated after thirty-four (34) days on 9 March 1979. On 13 March 1979, you received NJP for your 34-day UA as well as a second UA that lasted less than one day. You did not appeal your seventh and final NJP.

On 16 March 1979, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse, and misconduct due to frequent involvement of a discreditable nature with military authorities (aka pattern of misconduct). You expressly waived in writing your rights to consult with counsel and to request an administrative separation board. On 20 March 1979, your commanding officer (CO) recommended the Separation Authority that you receive a General (Under Honorable Conditions) (GEN) characterization of service. However, on 5 April 1979, the Separation Authority approved and directed your discharge for misconduct with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 12 April 1979, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 2 September 2020, this Board denied your initial discharge upgrade petition.

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 contentions that: (a) you received an OTH for one-time drug use and several violations, (b) you were not diagnosed as drug dependent, and (c) your CO recommended you receive a GEN discharge. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board noted that your CO's discharge characterization recommendation was not binding upon the Separation Authority. Regardless of the CO's recommendation, the Separation Authority determined the ultimate discharge characterization based on a review of your entire service record.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug possession is contrary to Navy core values and policy, and the Board noted that marijuana possession in any form is still against Department of Defense regulations and its use is not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a

significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your cumulative pattern of misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.70 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct totaling seven (7) NJPs was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

2/15/2024

