



**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. 10427-23

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 reconsideration application on 19 January 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 14 February 1983. Your pre-enlistment medical examination, on 8 November 1982, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On your enlistment application, you disclosed pre-service marijuana usage and an arrest for breaking and entering.

On 12 March 1985, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP. On 24 December 1984, your command issued you a "Page 13" retention warning (Page 13). At your Counseling and Assistance Center (CAAC) evaluation on 14 March 1985, you admitted it was a one-time use and that you didn't intend to use marijuana again. On 3 May 1985, you completed the 36-hour Navy Substance Abuse Prevention Program.

However, a Navy Drug Screening Laboratory message, dated 9 April 1986, indicated you tested positive a second time for marijuana. You admitted during a medical examination, on 23 April 1986, that your marijuana usage was infrequent - approximately once every four (4) months. The Board noted that this disclosure was in stark contrast to your previous "one-time use" statement.

On 1 May 1986, you underwent a second CAAC evaluation. You stated at that appointment you had only used marijuana on four occasions – twice prior to enlisting and only twice on active duty where you tested positive each time. The Board took notice that this disclosure was again inconsistent with your two previous statements about your marijuana use.

On 2 May 1986, you received NJP a second time for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP. On the same day, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. On 8 May 1986, you consulted with counsel and elected your right submit a written statement, and to request an administrative separation board (Adsep Board).

On 29 May 1986, an Adsep Board convened in your case. At the Adsep Board, you were represented by military counsel. Following the presentation of evidence and witness testimony, the Adsep Board members determined by unanimous vote that the preponderance of the evidence presented substantiated your drug-related misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you separated with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 10 July 1986, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

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 are asking for an upgrade so you can use Department of Veterans Affairs (VA) health care for mounting health issues, (b) due to the change in policy with marijuana, you feel it was unjust to be discharged without the ability to obtain VA benefits, and (c) marijuana does not come with as harsh a penalty today as it did when you were discharged. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and 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 noted you were caught two separate times using controlled substances, and the Board determined the record clearly reflected your 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.

Additionally, 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 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 and empathizes with your current medical condition, 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,

1/29/2024

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