



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. 10695-23
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 2 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 U.S. Navy and began a period of active duty service on 11 May 2006. Your enlistment physical examination, on 13 December 2005, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling.

On 20 June 2008, you received non-judicial punishment (NJP) for the wrongful possession of marijuana, and for failing to obey a lawful general order when you failed to notify your

command of your civilian DUI arrest in ██████████. You did not appeal your NJP.

On 15 July 2008, you were convicted in the Superior Court of ██████████, County of ██████████, of driving under the influence of alcohol. You were sentenced to paying a fine, probation for five (5) years, and you were required to enroll in the First Conviction Program (aka “MADD”) for three (3) months.

On 18 July 2008, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse, commission of a serious offense, and civilian conviction. On 22 July 2008, you elected in writing to request a hearing before an administrative separation board (Adsep Board).

On 24 September 2008, an Adsep Board convened in your case. At the Adsep Board, you were represented by 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 misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members recommended that you separated with a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, on 23 October 2008, you were separated from the Navy for misconduct with a GEN discharge characterization and assigned an RE-4 reentry code.

On 12 June 2023, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief. The NDRB determined that your GEN discharge was proper as issued that no change was warranted.

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) the Navy committed procedural errors with your discharge, (b) the reason for separation does not match the Department of the Navy procedures and guidelines, (c) there was never any positive urinalysis, no admission of drug use, no civil conviction for a drug-related offense, no history of drug abuse, no possession of paraphernalia, and no actions tantamount to a finding of guilt, and (d) you were not aware of the content of the bag, and the bag was never analyzed to confirm you were in possession of a banned substance or drug. Additionally, the Board noted you checked the “PTSD” box on your application but chose not to respond to the Board’s 20 December 2023 letter requesting supporting evidence of your claim. 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. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record, and in this case a GEN discharge characterization and no higher was appropriate. The Board noted that

marijuana possession and/or use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under GEN or under Other Than Honorable (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 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 determined that your administrative separation processing was legally and factually sufficient. The Board also noted that your sworn testimony at your Adsep Board was in direct contradiction to your stated contentions. A portion of your Adsep Board verbatim testimony went as follows:

Q: Before you went to the party and received the drug did you know what marijuana was and what it looked like?

A: **Yes, Sir.**

Q: When he handed it to you, did you know what it was?

A: **Yes, Sir.**

Q: Why did you take it?

A: I did not take it. He took out his bag and put it in my pocket.

Q: But you knew it was marijuana going into your pocket?

A: **Yes, Sir.**

Q: Did you want to look cool in front of your friends or did you just let it happen?

A: **I just let it take place sir.**

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 2.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.50 in conduct (proper military behavior) for a fully honorable characterization of service. The Board determined that your misconduct was not minor in nature. The Board concluded that your conduct marks during your active duty career were a direct result of your cumulative misconduct, all of which further justified your GEN characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious 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,

2/14/2024

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Executive Director

Signed by: █