



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. 10883-23
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 case 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).

You enlisted in the Navy and commenced a period of active duty on 16 August 1985. Prior to enlisting, on 12 August 1985, you signed the Navy Drug & Alcohol Abuse Statement of Understanding (SOU) wherein you acknowledged, in pertinent part, that “drug abuse by members of the United States Navy is against the law,” and “if I illegally or improperly use or possess alcohol or drugs, including marijuana, appropriate disciplinary and/or administrative action may be taken against me. In the case of drugs, this action may include trial by court-martial...”

On 29 April 1986, less than a year after signing this SOU, you tested positive on a command directed urinalysis for cannabinoids from a urine sample provided by you on 30 March 1986. Between 21 July 1986 and 31 July 1986, you had a period of unauthorized absence (UA), during which time you missed ship’s movement. Thereafter, you were convicted at Special Court-Martial (SPCM) of violating Article 86 of the Uniform Code of Military Justice (UCMJ) for UA,

violating Article 87 of the UCMJ for missing ship's movement, and violating Article 112a of the UCMJ for wrongfully introducing and distributing on board the ██████████ (██████████) seven grams of hashish. Your sentence, adjudged on 22 August 1986, included your forfeiture of \$425.00 pay per month for a period of four months, to be confined for a period of four months, to be reduced to pay grade E-1, and to be discharged from the naval service with a Bad Conduct Discharge (BCD). On 2 October 1986, the Convening Authority (CA) approved your sentence and ordered it executed, with the exception that confinement in excess of 60 days would be suspended for a period of 12 months from the date of trial, at which time, unless sooner vacated, the sentence would be remitted without further action. You were released from confinement on 10 October 1986 and placed on appellate leave. You did not appeal your case, and on 17 August 1987, the findings and sentence were affirmed and your BCD ordered executed. You were so discharged on 26 August 1987.

On 29 May 2002, this Board denied your previous request for a discharge upgrade, at that time, finding the evidence you submitted insufficient to establish the existence of probable material error or injustice.

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 discharge characterization of service to Honorable (HON) and your narrative reason for separation to "Secretarial Authority," along with your contentions that (1) your actions since discharge represent a man not defined by his "bad conduct" discharge, (2) you have made it your life's mission to overcome obstacles and try to make the world a better place through volunteer work and dedication to important causes, and (3) due to the passage of time and your personal development, it would be materially unjust for you to continue life being prejudiced by your discharge.

For purposes of clemency and equity consideration, the Board considered your counsel's brief, and the additional supporting documentation you provided, including your real estate license card, and documents confirming your participation in, and/or support of the U.S. Navy Memorial, Wounded Warriors, the Vietnam Veteran's Memorial Fund, the ██████████ Sheriff's Association, the Law Enforcement Officer's Relief Fund, the National Law Enforcement Officer's Memorial, the International Fellowship of Christians and Jews, the TBN Network, the Defenders of Wildlife, and Boys Town.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offenses. 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. The Board further noted the serious of your misconduct in that it involved not only your wrongful use of marijuana, but your introduction of marijuana to your ship and distribution

on board. The Board considered the negative impact these actions likely had on your shipmates and on the good order and discipline of your command.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge contributions, the Board noted the majority of your supporting documents relate to monetary donations and do not assist the Board in evaluating your post-service character or conduct. In this regard, a current detailed personal statement, and advocacy letters, whether from employers or other credible sources, may assist the Board in determining whether clemency could be appropriate. However, as your case stands, 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 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,

2/27/2024

