



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

■
Docket No. 10891-23
Ref: Signature Date



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 12 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, 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 7 January 1997. Upon your enlistment, you received a waiver for preservice experimental use of a controlled substance-marijuana. On 10 June 1997, you began a period of unauthorized absence (UA) which lasted 28 days and resulted in nonjudicial punishment (NJP) on 16 July 1997. The same day, you were counseled concerning your previous UA violations. You were advised that failure to take corrective action could result in administrative separation.

On 12 August 1997, you received a second NJP for wrongful use of a controlled substance-marijuana. On 8 September 1997, you were counseled and offered rehabilitation treatment for alcohol dependency, at which point, you decided to decline treatment. On 9 September 1997, you

were evaluated by a medical officer and diagnosed with alcohol dependency. On 11 September 1997, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, drug abuse, and alcohol abuse rehabilitation failure. Subsequently, you decided to waive your procedural rights. On 18 September 1997, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization. The discharge authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 10 October 1997, you were so discharged.

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 were able to address your anxiety disorder and have been attending mental health therapy for the past eight years, and (b) you have accomplished many things in the past 15 years. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence. For purposes of clemency and equity consideration, the Board noted provided documentation describing post-service accomplishments.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related offense. 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments while incarcerated, 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 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,

2/29/2024

