



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. 123-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's 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 application on 26 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your spouse's 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).

Your spouse enlisted in the Navy and commenced a period of active duty on 27 February 1980. On 8 January 1981, he received non-judicial punishment (NJP) for wrongful possession of marijuana. On the same day, he was counseled regarding his frequent involvement with military authorities, and he was informed further misconduct may result in the initiation of administrative separation proceedings. On 2 July 1984, he received NJP for an unauthorized absence.

On 31 January 1986, your spouse was evaluated by the Counseling and assistance center (CAAC) and determined to be psychologically dependent on marijuana. He subsequently received his third NJP for wrongful use of marijuana on 6 February 1986. Consequently, on 7 February 1986, he was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point he waived his right to consult with counsel, and a hearing of his case before an administrative discharge board (ADB). The separation authority approved and directed his discharge with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 18 March 1986, he was 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 to upgrade your spouse's characterization of service and your contentions that marijuana use was not tolerated as it is today and you desire eligibility for survivor's benefits through the Department of Veterans Affairs. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters for your spouse.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your spouse's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your spouse's misconduct and the fact it included instances of drug abuse. 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. Additionally, contrary to your contention, 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 considered that your spouse was given an opportunity to correct his drug related conduct deficiencies but chose to continue his drug abuse. Finally, 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 concluded your spouse's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board empathizes with your current medical situation and the loss of your spouse, 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. 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

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