



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. 1161-24
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 application on 14 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 entered active duty with the Navy on 12 November 1970. On 30 September 1971, you received non-judicial punishment for disrespect toward a superior petty officer and communicating a threat. On 27 April 1972, your commanding officer asked Naval Investigative Service (NIS) to conduct an inquiry into your involvement in dealing drugs. NIS noted that another Sailor identified you as one of five men dealing drugs. On 15 May 1972, an Enlisted Performance Evaluation Board recommended you be retained in the Navy due to a lack of evidence proving you were a drug dealer. Chief of Naval Personnel reviewed NIS's inquiry and determined no further action was required due to lack of evidence. On 5 June 1972, you were formerly counseled that any further misconduct could result in administrative separation. In June 1972, an NIS investigation noted that a sixteen-year-old girl identified you as a drug dealer. The report also noted that a reliable confidential informant stated that you sold marijuana to four different individuals.

As a result, you were notified of pending administrative separation action by reason of convenience of the government due to unsuitability (wrongful use and transfer of marijuana). You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). However, on 18 August 1972, you agreed to conditionally waive your ADB in exchange for a General (under honorable conditions) (GEN) characterization of service. Your commanding officer agreed and forwarded your package to the separation authority recommending your discharge with a GEN characterization of service. The separation authority approved the commanding officer's recommendation and directed a GEN characterization of service by reason of convenience of the government due to unsuitability. On 18 October 1972, 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 to upgrade your discharge and contentions that you never received a reason for discharge, never offered or received legal counsel, and you accepted discharge due to your wife being pregnant with twins. For the purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 non-judicial punishment and request to be discharged with a GEN, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, contrary to your contentions of not knowing why you were discharged and never receiving legal counsel, the Board noted your record documents you were informed of the basis for your administrative separation processing, assisted by legal counsel, and submitted a voluntary request to be discharged with a GEN in exchange for waiving your ADB rights. Therefore, the Board was not persuaded by your contentions or implied argument that you were denied due process. Ultimately, the Board determined you were fortunate to receive a GEN characterization of service based on the seriousness of the confidential witness drug distribution allegations against you; allegations corroborated, in part, by the earlier witness statement. As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN characterization of service. 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,

3/1/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]