



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. 2138-24
Ref: Signature Date

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Dear █:

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 15 March 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).

Following your entry level separation from the Delayed Entry Program on 25 June 1992, you enlisted in the U.S. Navy and began a period of active duty service on 21 July 1992. Your enlistment physical examination, on 9 October 1991, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling. On 9 November 1992, you reported for duty on board the █ (█) in █, █.

On 16 March 1994, you commenced a period of unauthorized absence (UA). While in a UA status you missed your ship's movement on 4 April 1994. Your UA terminated on 12 April 1994 and you did not report back to your command until 25 April 1994.

On 28 April 1994, you received non-judicial punishment (NJP) for your 27-day UA, missing movement, and for the wrongful use of a controlled substance (marijuana). You did not appeal

your NJP.

On 25 June 1994, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and drug abuse. On the same day, you waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board. On 26 July 1994, your commanding officer (CO) recommended to the Separation Authority (PERS-83) that you be separated with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 18 August 1994, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

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 are not claiming an error because you broke the rules, but you did serve more than half of your enlistment contract, (b) since getting out you've been a good citizen and father, and (c) you want to do more with your own future and your kids' future, and having a good standing with the Navy would help. For purposes of clemency and equity consideration, the Board you did not provide documentation describing post-service accomplishments or advocacy letters.

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 as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under 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 serious 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.

Additionally, absent a material error or injustice, the Board declined to summarily grant your request solely for the purpose of facilitating medical or other veterans' benefits. 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. 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,

3/18/2024

