



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. 7969-23

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 application on 11 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 this 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the United States Navy commenced a period of active duty on 12 April 1982. On 20 July 1982, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a regulation by using a controlled substance (marijuana). You were formally counseled due to this misconduct and put on notice that further misconduct could result in administrative or judicial processing. On 22 November 1982, you received your second NJP for violating UCMJ Article 134, for possession and use of a controlled substance (marijuana), and for entering an unauthorized space. You were again retained and formally counseled due to this misconduct. On 23 May 1983, you received your third NJP for

violating UCMJ Article 134, for possession of a controlled substance (marijuana). You did not appeal any of these NJPs.

On 27 May 1983, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. After consulting with qualified counsel, you waived your right to present written or oral matters in your defense. Prior to your discharge, you were screened and determined not to be drug dependent. During your separation physical, on 11 July 1983, you failed to disclose any mental health issues or concerns. On 14 July 1983, you were discharged from the Navy for misconduct due to your drug abuse and assigned an Other Than Honorable (OTH) characterization of service and 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: (1) your desire to upgrade your discharge characterization, (2) your assertion that you smoked marijuana under duress, and (3) your contention that it was an injustice to be held "in limbo" due to a positive urinalysis when you never possessed illegal drugs. 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 of your claim. For purposes of clemency and equity consideration, the Board noted that you provided evidence related to your post-service accomplishments, to include your employment with New York Juvenile Justice and your role as Bishop of the congregation at GreenPoint Tabernacle of Praise.

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 NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated drug offenses in a one-year period. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal substance abuse is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. Additionally, such misconduct places an undue burden on your chain of command and negatively impacts mission accomplishment. A characterization under OTH conditions 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 service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board highlighted that your characterization was based on a series of infractions, not a one-time incident, beginning almost immediately after your enlistment. For these reasons, the Board concluded that an OTH remains the appropriate characterization of service in your case.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos 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,

3/25/2024

