



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. 8676-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 22 April 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 13 April 1982. At the time of your enlistment, you admitted being arrested by civil authorities for possession of controlled substances. Subsequently, you acknowledged and signed the Navy Drug Abuse Statement of Understanding. On 30 June 1982, you received a fraudulent enlistment waiver for failure to disclose pre-service police and drug records.

On 10 January 1983, you received nonjudicial punishment (NJP) for three instances of disrespectful in language towards a senior petty officer, sleeping in a BEQ room other than the one assigned to you, and failure to obey a lawful order by bringing prohibit beverages into the barracks area. On 5 July 1983, you began a period of unauthorized absence (UA) which lasted one-day. On 4 November 83, you were evaluated by a medical officer and CAAC personnel as a result of a positive urinalysis and recommended for enrollment the Navy Alcohol Safety Action Program (NADSAP) and Urinalysis Program. On 9 November 1983, you received a second NJP

for wrongful use of a controlled substance-marijuana. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. The separation authority approved the recommendation and, on 30 December 1983, you were so discharged.

On 27 July 2022, this Board denied your previous request for a discharge characterization upgrade.

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 considered yourself as the overachiever of the family and were recognized by friends as a good guy, (b) you have never in your life felt such shame for letting others down, (c) you were once a well-balanced, systematic, high energy thinker but now are shattered and confused in between depression and anxiety, (d) you were discharged into the streets of █ to an alcoholic aunt with five children suffering from their own levels of addiction, (e) you believe there should have been some sort of drug abuse program, therapy of a nature reinforcing morals, goals, and self-worthy, (f) you have been encouraged by your mother to look at what she believes is due benefits of some sort belong to you, (g) your pride, stubborn ego image, led you into a lifestyle overran by substance abuse. Additionally, the Board noted you checked the "PTSD" box on your application but did not provide supporting evidence of your claim. For 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you were given an opportunity to service in the Navy despite your pre-service history of misconduct and, also, provided an opportunity to correct your conduct deficiencies after your first NJP. Therefore, the Board was not persuaded by your arguments regarding the Navy's failure to offer you an opportunity to rehabilitate.

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. 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 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,

5/12/2024

