



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 9381-23

Ref: Signature Date

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Dear ██████████

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 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 to 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, after being interviewed for pre-service marijuana use, began a period of active duty on 18 September 1986. On 19 August 1988, when you absented yourself without authority and remained in an unauthorized absence (UA) status until your voluntary return to military authority on 7 October 1988. You had participated in a random drug screen urinalysis on 18 July 1988, prior to absenting yourself, and a drug use report from 21 August 1988 reported the results of your urinalysis positive for marijuana use. On 19 December 1988, you were tried before Special Court-Martial for violations of the Uniform Code of Military Justice (UCMJ) and convicted of violating Article 86 due to your UA period and Article 112a due to your wrongful use of marijuana.

Although your sentence did not include a punitive discharge, your command proceeded to process you for administrative separation by reason of misconduct due to drug abuse and commission of a serious offense. After consulting legal counsel, you elected to request a hearing before an administrative separation board; however, you subsequently elected to waive the hearing and chose not to make a statement. The recommendation for your discharge under Other

Than Honorable (OTH) conditions was forwarded via Chief of Naval Personnel to Assistance Secretary of the Navy (M&RA) for final decision. You were discharged, on 3 April 1989, with an OTH, after which a message regarding the status of your pending medical board proceedings reflected that, although you had been authorized a disability discharge with severance pay, it had not been executed due to your involuntary administrative separation for misconduct.

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 change your narrative reason for separation and separation code. You contend that your back injury warrants mitigation of your discharge due to having played a significant role in your decision making process. You state that you lacked understanding of the ramifications of your decision to agree with the "discharge offer" which was made to you, and you believe that your post-discharge character reflects your personal growth in having learned from your mistakes and rehabilitated yourself. You believe that an upgraded discharge would provide potential benefits to further that growth. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement, six character letters regarding your post-discharge character, a letter of denial of eligibility from the Department of Veterans Affairs (VA), your service health records, and the report of the Medical Board, as well as a letter from Naval Personnel Command.

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 a drug 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. 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. Finally, the Board determined that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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. 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 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 is attached 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,

3/27/2024

