



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. 667-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 26 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, 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 enlisted in the Navy and began a period of active duty on 29 June 1998. You absented yourself without authority from 2 - 5 April 1999 and on 27 May 1999. You were subject to nonjudicial punishment (NJP) on 13 October 1999 for three violations of the Uniform Code of Military Justice (UCMJ) to included Article 92, for failure to obey a lawful regulation, Article 107, for making a false official statement, and Article 134, for underage drinking. You were issued administrative counseling advising you to correct your deficiencies and warning you that continued misconduct could result in your administrative discharge under adverse circumstances.

However, you then undertook four additional periods of extended UAs between May and August 2001, totaling 72 days. You were then subject to a drug screening urinalysis following your return to military control and, on 18 September 2001, a Naval Drug Lab message reported your sample positive for marijuana use. You were subject to a second NJP for your violation of Article 112a due to wrongful use of marijuana as well as four specifications under Article 86 for

your periods of UA. Consequently, you were notified of administrative separation processing for the reason of misconduct due to drug abuse, commission of a serious offense, and pattern of misconduct. You elected to waive your right to a hearing before an administrative separation board. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved for the primary basis of drug abuse and you were so discharged on 23 October 2001.

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 your contentions that you were told you could change your discharge after six months, it has now been over 20 years, and that you would like to be able to receive veterans' benefits. For purposes of clemency and equity consideration, the Board noted 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. 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. 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. Additionally, The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 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 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,

5/20/2024

