



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. 0856-24
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 application on 11 March 24. 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 commenced active duty on 17 November 1982 after admitting to pre-service marijuana use. In December 1982, you tested positive for Cannabinoids and stated that you failed disclose all of your previous marijuana use to your recruiter, and that you would not use marijuana or any other controlled substance again in the future.

During an investigation of suspected marijuana use onboard ship on 15 September 1983, you made statements admitting to smoking marijuana on 2 September 1983 while on emergency leave. On 14 October 1983, you received non-judicial punishment (NJP) for wrongful use of marijuana.

On 19 April 1984, you tested positive for marijuana. On 27 April 1984, you received NJP for wrongful use of marijuana. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that

any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 25 May 1984, you were notified that you had been formally evaluated as a drug abuser and given a rehabilitation regimen for continued naval service. On 28 June 1984, you again tested positive for marijuana. On 29 June 1984, you were evaluated at medical, and found to not be drug or alcohol dependent. On 20 July 1984, you received your third NJP for wrongful use of marijuana. On 27 Jul 1984, you received NJP for failure to prevent or report an indecent assault and skylarking.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to drug abuse. The separation authority concurred with the ADB and directed an OTH discharge by reason of misconduct due to drug abuse. On 20 November 1984, you were so discharged.

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 change your discharge characterization of service and your contentions that your brother had been killed, your wife was pregnant, those pressures made you want to get it all out of your head temporarily, you have not had any legal issues since then, and you have rehabilitated yourself. Additionally, the Board noted you checked the "Mental Health" box on your application but chose not to respond to the 31 January 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered the character references you provided.

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. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your discharge for misconduct due to drug abuse.

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 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,

3/27/2024

