



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

█  
Docket No. 1004-24  
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 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, 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 11 April 1977. On 21 December 1978, you were arrested by civil authorities and charged with possession of marijuana. As a result of the foregoing, you were sentenced to one year of confinement commuted to 24 month probation, \$250.00 fine, and court cost awarded. You were ordered to be release upon payment of fine and court cost.

On 15 February 1979, you received nonjudicial punishment (NJP) for violation of a general order or regulation by being in possession of a controlled substance-marijuana. On 27 September 1979, you received a second NJP for possession of approximately one quarter pound of marijuana onboard a naval vessel. 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. On 13 October 1979, a medical officer determined that you were psychologically dependent on drugs. Your commanding officer recommended an Other Than

Honorable (OTH) discharge characterization by reason of misconduct due to drug abuse. On 8 December 1979, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 7 January 1980, 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 for a discharge upgrade and contentions that: (a) while awaiting court martial, the informant was arrested, and a witness was inadmissible, (b) you were not convicted by court martial and decided to take an offer for an OTH characterization, and (c) you changed your life and became a productive citizen for the past 50 years. 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 and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Further, the Board considered the likely discrediting effect your civilian conviction had on the Navy. Finally, the Board was not persuaded by your contentions regarding a court-martial witness and noted you were convicted by a civilian court for a drug offense and found guilty at two NJPs for additional drug offenses. The Board considered that you continued to commit drug offenses even after your civilian conviction.

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 after 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, \_\_\_\_\_  
4/3/2024

