



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. 1028-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 26 July 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 24 April 2000. Your pre-enlistment physical examination, on 23 March 2000, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You disclosed pre-service marijuana usage multiple times on your medical history. On 25 November 2000, you reported for duty on board the █.

On 13 March 2001, you received non-judicial punishment (NJP) for unauthorized absence (UA).

You did not appeal your NJP. On 20 May 2001, you received another NJP for UA. You did not appeal your second NJP.

On 21 April 2002, you were convicted at a Summary Court-Martial (SCM) for violating a lawful general order. You were sentenced to a forfeitures of pay, a suspended reduction in rank to the next lowest enlisted paygrade, and restriction for thirty (30) days. The Convening Authority approved the SCM sentence.

On 7 December 2002, you received NJP for the wrongful use of a controlled substance (ecstasy). You did not appeal your NJP.

On 12 January 2003, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) for the good of the service to escape court-martial for seven (7) separate specifications of the wrongful use of marijuana. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You voluntarily admitted you were guilty of your charged misconduct, and you acknowledged and understood the adverse nature of an OTH discharge and the potential life-long adverse consequences of receiving such a characterization. Ultimately, on 3 April 2003, you were separated from the Navy with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 had undiagnosed medical conditions on active duty you weren't aware of, and (b) during your three (3) years of naval service, you were and still are very proud to be part of the Navy family, and (c) unfortunately due to your mental illness you made choices that weren't correct at the time. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 5 February 2024 letter requesting supporting evidence of your claims. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which consisted solely of your statement on the DD Form 149 without any additional supporting documentation.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The

Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also noted that you did not provide any medical evidence to substantiate any of your mental health claims. Moreover, even if the Board assumed that your willful and persistent misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your repetitive, aggregate misconduct far outweighed any and all mitigation offered by such purported mental health conditions.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

7/31/2024

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Executive Director

Signed by: █