



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

█  
Docket No. 1725-24  
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 8 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 Navy and commenced active duty on 5 October 1982. You disclosed pre-service marijuana use during your enlistment processing. On 7 April 1983, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct; specifically, for your lack of maturity and responsibility based on causing a disturbance in the Bachelor Enlisted Quarters, two failed exams, and failure to participate in field day. 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 2 July 1984, you were issued Page 13 counseling for larceny and failure to be at your appointed place of duty. You were again advised that any further deficiencies in your performance and/or conduct may result

in disciplinary action and in processing for administrative discharge. On 5 July 1984, you received non-judicial punishment (NJP) for five specifications of failure to go to your appointed place of duty at the time prescribed and larceny of government property.

On 14 November 1984, you were found guilty at Summary Court Martial (SCM) of two specifications of failure to go to your appointed place of duty, one specification of absenting yourself from your appointed place of duty, and wrongful use of marijuana.

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 waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 11 December 1984, you were evaluated by medical and found not drug or alcohol dependent. Your commanding officer recommended your administrative separation with an OTH characterization of service. The separation authority approved the recommendation and you were so discharged on 9 January 1985.

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 you were told your discharge would be upgraded after six months, you were the last child at home taking care of your single mom, and that you tried to get a hardship discharge but it was denied. Additionally, the Board noted you checked the "Mental Health" box on your application but chose not to respond to the 26 February 2024 letter from the Board requesting evidence in support of your claim. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Further, the Board further noted that you were stationed twenty-six miles from your mother's address when the majority of your misconduct, including the drug offense, occurred. Therefore, the Board was not persuaded by your argument that you committed misconduct in order to take care of your single mother. Finally, the Board noted that there is no provision of federal law or in Navy regulations that allows for a discharge to be automatically upgraded after a period of time.

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 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,

7/24/2024

