



**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. 1819-24  
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 20 September 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 to 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 6 July 1979 with an undisclosed pre-service history of marijuana use. On 30 August 1979, you were issued administrative counseling that you were being retained in spite of this fraudulent enlistment and warning you that future misconduct could result in adverse administrative or disciplinary action. On 12 March 1980, you accepted nonjudicial punishment (NJP) for violation of the Uniform Code of Military Justice (UCMJ) for two specifications under Article 92, for possession of 11.01 grams of marijuana and failure to obey a lawful order, and under Article 86, for an unauthorized absence of seven hours. You were again issued administrative counseling warning you of the potential adverse consequences of continued misconduct. On 24 April 1980, you received your second NJP for another Article 92 violation for failure to obey a lawful regulation. A formal naval message addressing the disposition of your drug possession offense was submitted on

30 June 1980 in which it documented that you had self-reported to having used marijuana approximately three times per week between July of 1979 and March of 1980; however, a substance abuse evaluation identified you as not being dependent and recommended that no rehabilitation was required at that time.

Although the punishment from your second NJP had initially been suspended, it was vacated on 4 September 1980 due to your violation of Article 134 by possession of an unauthorized identification card. On 12 October 1980, you were arrested by civil authorities on charges of felony selling of marijuana and misdemeanor possession of marijuana; however, a record of your civil conviction, on 18 December 1980, documents that you pleaded guilty only to possession of cannabis, with the felony distribution charge being dismissed. Inconsistent with this civil record, an administrative counseling entry documented that your civil conviction was for both the possession offense and the felony sale and transportation of marijuana.

Notwithstanding this civilian conviction, you continued serving on active duty. You were subject to a third NJP, on 2 February 1981, for violation under Article 86 due to being absent without authority from your appointed place of duty; specifically, bridge watch. You were further administratively counseled, on 19 February 1981, that you had been identified as a drug user. You then absented yourself without authority for a period of 15 days from 31 March 1981 through 15 April 1981 and, following your voluntary return to military authority, were subject to your fourth NJP for your unauthorized absence (UA). On 22 April 1981, you were administratively counseled and warned that your frequent involvement of a discreditable nature with military or civilian authorities could result in administrative separation if your misconduct continued. You also received a medical evaluation, having been referred due to poor performance, which identified you as having a minor personality disorder of apathy.

On 22 May 1981, you received your fifth NJP for a violation of Article 92 after willfully disobeying a lawful order to stand fast on the quarterdeck. Following this fifth NJP, you were escorted to sickbay and received another medical evaluation after diving overboard while in port. After this evaluation found you fit for duty, you received your sixth and final NJP, on 29 May 1981, for two additional specifications of violation under Article 86 for being absent without authority for three hours, seven instances of failure to report for restriction muster, restriction breaking, and two specifications of violations under Article 92 for failure to obey a lawful order.

Consequently, you were notified of processing for administrative discharge for misconduct due to frequent involvement of a discreditable nature with military authorities and for drug abuse. You elected to waive your rights to consult counsel and to request a hearing before an administrative separation board. The recommendation for your discharge under Other Than Honorable (OTH) conditions noted that your entire military career had been marked by disciplinary problems and repeated counseling and warnings, with your performance having degenerated to the point where you were of no value to the command. Ultimately, your separation was approved for the primary reason of misconduct due to frequent involvement of a discreditable nature with military or civil authorities and, on 19 June 1981, you were so discharged. In your separation physical, you reported being in good health with no noted mental health concerns.

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 to “Honorable,” to change your narrative reason for separation to “Secretarial Authority” and to expunge the erroneous record of a felony conviction from your official military personnel file. The Board also considered your contentions that you needed help during your military service, which the Navy failed to provide, but have worked in the years since your discharge to become a valuable member of your community and are unjustly stigmatized by your discharge in contrast to who you are today. You believe your characterization of service is an injustice when considering your post-service accomplishments, to include that you have your own business and dedicate much of your time in service of others. For purposes of clemency and equity consideration, you submitted four character letters, documentation of a background check from the Federal Bureau of Investigation, your counsel’s brief, your official military personnel file, and your service health records.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board noted the comments provided by your former commanding officer in his recommendation for your discharge and concurred with his assessment. Finally, the Board observed you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. The Board was not persuaded by your arguments that the Navy was, at least partially, at fault in your misconduct and noted that you were counseled on several occasions on how to correct your behavior and the potential consequences of your actions.

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 and rehabilitation, 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.

With respect to your specific request regarding the expungement of reference to your felony conviction, the Board found that, although the reference in the administrative counseling entry is, in fact, an administrative error, this error was neither a controlling factor with respect to the recommendation for your administrative separation, as observed in the specific comments made in that recommendation, nor did the Board consider this error to be material or relevant to the decision to deny relief. Therefore, the Board found insufficient basis to warrant correction of this error. However, the Board noted that record of this decision will be documented in your official military personnel file, which will ensure that your permanent record contains the Board’s acknowledgment that the reference to a felony civil conviction is, in fact, an administrative error.

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,

10/28/2024

