

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

> Docket No. 1957-24 Ref: Signature Date



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 threemember panel of the Board, sitting in executive session, considered your application on 15 April 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 November 1984. On 28 November 1984, you were issued an administrative remarks (Page 13) counseling advising you that you had been dropped from your guaranteed A school for failure to meet the minimum security requirements. On 4 January 1985, you received Page 13 counseling that you had fraudulently enlisted by failing to disclose pre-service drug use and were being considered for retention. On 15 January 1985, your Commanding Officer (CO) recommended a waiver for Fraudulent Enlistment due to failure to disclose your complete pre-service police history, including an October 1974 charge for shoplifting, a June 1981 arrest for counterfeiting a one-dollar bill, and a December 1981 apprehension for burglary. On 6 February 1985, you were issued a Page 13

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

On 25 April 1985, you received non-judicial punishment (NJP) for dereliction in the performance of duty. On 1 August 1985, you received NJP for wrongful use of a controlled substance.

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. The Separation Authority directed your discharge with an OTH characterization of service on 3 September 1985. On 5 September 1985, you received NJP for wrongful appropriation of government property and breaking restriction. On 6 September 1985, you were discharged with an OTH characterization of service.

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 the Navy bears some responsibility because they knew about your positive urinalysis when you were in boot camp, your cannabis use led to your misconduct which led you to continue to use cannabis until discharge, and cannabis is now legal in twenty-four states, including your home state. 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 NJPs, 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 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. Additionally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. Regardless, the Board was not persuaded by your argument that the Navy bears some responsibility for your drug abuse because they retained you after discovering your attempt to fraudulently enlist. Finally, the Board took into consideration that you continued to commit misconduct even while you were being processed for administrative separation. The Board found that your conduct showed a complete disregard for military authority and regulations.

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,