



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

█
Docket No. 2132-24

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 three-member panel of the Board, sitting in executive session, considered your reconsideration application on 17 May 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).

You enlisted in the U.S. Navy and began a period of active duty service on 11 May 1981. Your pre-enlistment medical examination, on 25 February 1981, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your enlistment application you disclosed pre-service marijuana usage approximately twenty (20) times.

On 5 November 1983, your command issued you a "Page 13" retention warning (Page 13) documenting you being counseled for proper military attire, uniform regulations, and on the proper manner in which to stand a military security watch. On 12 February 1984, you were suspended for cause, without flight pay, from duties involving flying for your positive urinalysis results for marijuana.

On 14 April 1984, you received non-judicial punishment (NJP) for disobeying a lawful order.

You did not appeal your NJP. On 3 November 1984, after successfully completing a command level rehabilitation program, your command restored you to a flight status and lifted your suspension.

On 18 February 1985, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On 24 February 1985, you received NJP for: (a) conspiracy with another to commit an offense punishable under the Uniform Code of Military Justice, (b) soliciting another to commit an offense by wrongfully soliciting another to provide a urine sample in an attempt to deceive the Navy urinalysis program during a command unit sweep, and (c) disobeying a superior commissioned officer by providing a urine sample which was not your own. As part of your punishment, you were again suspended from aircrew status. You did not appeal your NJP.

Between 24 February 1985 and 21 March 1985, you received four (4) Page 13 entries documenting adverse action your command took against you: (a) being suspended for duty involving flying as a crewmember, (b) being disqualified from duties involving flying by reason of misconduct, (c) revocation of flight orders, and (d) the cancellation of your Naval Aircrewman designator and the rescinding of your Naval Aircrew breast insignia, (d) your Aircrew Program disqualification.

Additionally, on 2 March 1985, your drug/alcohol evaluation indicated that you were neither drug/alcohol dependent, nor physically and psychologically dependent on marijuana. On 15 March 1985, your command issued you a Page 13 documenting a UA, and for being in an improper uniform. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 24 March 1985, you received NJP for the wrongful use and possession of controlled substances. You did not appeal your NJP. On 28 March 1985, you were further disqualified for assignment to nuclear weapons positions.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel, waived your rights to submit written statements, and did not request an administrative separation board. In the interim, on 2 May 1985, your security clearance was revoked. On 8 May 1985, your separation medical examination noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 10 May 1985, you were separated from the Navy for misconduct on the last day of your enlistment with an under Other Than Honorable conditions (OTH) characterization of service, 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 served four (4) full years in the U.S. Navy and were a search and rescue swimmer, and also a plane captain for the ██████████, (b) you admitted to smoking pot and felt at the time you were getting out of the military so you didn't fight for your rights, (c) you signed an Honorable discharge three (3) days before your discharge, but the day you were checking out they made you

sign an OTH and made an example out of you, (d) you did all four (4) years in the Navy and feel like you should have received an Honorable discharge, (e) your Chief didn't like you at the time and now you are friends on social media, and he advised you to try and upgrade your discharge, (f) you were young and did something stupid, (g) you flew 700 hours in a helicopter, (h) you were a good kid and did your job, and the other person who got busted was sent to rehab, (i) your command knew you were getting out so they "threw the book" at you, (j) you were never smoking during work, (k) you have been a good citizen post-service and been a sales representative for several furniture companies and been successful in car sales over the last thirteen (13) years. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, which consisted only your statement on your application.

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 is contrary to Navy core values and policy, renders such service members 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 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. Finally, the Board was not persuaded by your arguments regarding your time in service since you continued to commit misconduct throughout the entirety of your enlistment.

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,

5/24/2024

