



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. 2420-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 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, 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 Navy and began a period of active duty on 11 June 1979. On 6 March 1980, you began a period of unauthorized absence (UA) which lasted 18 days and resulted in nonjudicial punishment (NJP) on 14 May 1980. On 19 September 1980, you began a second period of UA which lasted eight-days and resulted in your second NJP on 17 October 1980. On 26 July 1981, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse (sale) and misconduct due to frequent involvement. On the same date, you decided to waive your procedural rights. On 6 July 1981, you were evaluated by a drug and alcohol abuse counselor, at which point, you admitted using drugs for recreational purposes. Subsequently, you expressed a strong desire to be administrative separated from the Navy.

On 12 August 1981, you began a third period of UA which lasted 191 days. On 24 March 1982, you were convicted by special court martial (SPCM) for an extensive period of UA. You were

sentenced to a Bad Conduct Discharge (BCD), reduction in rank, confinement at hard labor, and forfeiture of pay. After your SPCM sentence was affirmed and duly executed, on 17 October 1983, you were discharged with a BCD characterization by reason of conviction by SPCM.

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 you have suffered enough. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offense. The Board determined that sale of controlled substances 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 found that your conduct showed a complete disregard for military authority and regulations. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. Even in light of the Wilkie Memo and reviewing the record liberally and 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 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 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,

5/30/2024

