



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. 2774-24
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 5 June 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 on 27 November 1987. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program, but a waiver was not required.

An investigation was conducted in April 1990, and three Sailors reported you had smoked marijuana. On 9 May 1990, you received non-judicial punishment (NJP) for two specifications of wrongful use, possession, etc. of a controlled substance. You received your second NJP, on 18 May 1990, for breaking restriction. Then, on 29 May 1990, you received your third NJP for unauthorized absence and breaking restriction. Consequently, you were notified of administrative separation processing for pattern of misconduct and drug abuse. After you waived your rights, the commanding officer made his recommendation to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization. The separation authority accepted the recommendation and directed you be discharged. You were so discharged on 13 August 1990.

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, despite testing negative and lacking marijuana possession, you were disciplined for an unfounded marijuana charge at NJP and faced racism and unfair treatment. Additionally, the Board noted you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence. For purposes of clemency and equity consideration, the Board noted you provided service records but no 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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. Further, the Board was not persuaded by your contention that you were wrongfully found guilty of drug abuse since your commanding officer relied upon a NCIS investigation that identified you as a drug abuser. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contentions of racism or unfair treatment. Rather, the Board evidence in your record that you possessed and abused marijuana while on active duty.

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,

6/25/2024

