



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. 3567-24
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 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Naval Reserves and began a period of active duty on 9 November 1977. On 5 January 1980, you began a period of unauthorized absence (UA) which lasted three-days and resulted in nonjudicial punishment (NJP) on 16 January 1980. On 14 July 1981, you were honorably discharged by reason of immediate reenlistment and began a second period of active duty service. You were issued a DD Form 214 for your first enlistment period that reflects your Honorable characterization of service.

On 21 July 1982, you received a second NJP for making a false official statement. On 10 November 1982, you received a third NJP for driving a motor vehicle without liability insurance. On 22 December 1982, you received a fourth NJP for failure to obey a lawful order to stop payment of single BAQ after registering in unaccompanied enlisted personnel housing barracks.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to minor disciplinary infractions and misconduct due to pattern of misconduct. On 14 March 1983, you submitted a qualified waiver of your right to an administrative discharge board (ADB) hearing provided that you were recommended for a General (Under Honorable Conditions) discharge characterization of service. On 23 March 1983, your commanding officer recommended a General (Under Honorable Conditions) discharge characterization by reason of misconduct due to minor disciplinary infractions and misconduct due to pattern of misconduct. However, it appears your command retained you on active duty and provided you another opportunity to correct your conduct deficiencies. On 7 April 1983, you were counseled concerning problems with deficiencies in training progress, military bearing and appearance, liquidation of personal and financial obligations and timely arrival to work. You were advised that failure to take corrective action could result in administrative separation.

On 17 January 1984, you tested positive to use of a controlled substance-cocaine. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. On 3 May 1984, you requested to exercise your right to a hearing by an ADB. On 24 May 1984, the ADB voted (3) to (0) that you committed misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. The ADB recommended you be discharged with a General (Under Honorable Conditions) characterization. On 29 May 1984, your commanding officer concurred with the ADB recommendation. On 8 June 1984, the separation authority approved and ordered a General (Under Honorable Conditions) discharge characterization by reason of misconduct due to pattern of misconduct. On 15 June 1984, you were so discharged.

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) after serving for seven years you are hoping to obtain an Honorable discharge, and (b) you are retiring this year and regret being discharged from the Navy. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Further, 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. Finally, the Board determined that the Navy already gave you a large measure of clemency by granting you a GEN discharge for misconduct that normally merits an Other Than Honorable characterization of service.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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.

As previously discussed, your record contains a DD Form 214 that annotates you received an Honorable discharge from the Navy for the period 9 November 1977 to 14 July 1981. This DD Form 214 may be utilized to apply for Department of Veterans Affairs benefits requiring an Honorable characterization of service.

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,

5/2/2024

