

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

> Docket No. 3585-24 Ref: Signature Date



Dear

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 24 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).

You previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 24 August 2005. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 20 April 1987, based on their determination that your discharge was proper as issued.

You enlisted in the Navy and began a period of active duty on 13 August 1979. On 26 November 1980, you received non-judicial punishment (NJP) for wrongful possession of fireworks. On 5 June 1981, you received a second NJP for failure to go to your appointed place of duty. On 23 June 1981, you were issued an administrative remarks (Page 13) retention warning documenting deficiency in your poor military performance and conduct. You were advised that your continued involvement with military authorities in violation of the Uniform Code of Military Justice (UCMJ) will not be condoned. The Page 13 expressly warned you that

any further deficiencies in your performance and/or conduct may result not only in disciplinary action but in processing for administrative discharge. On 21 April 1982, you were convicted by a special court-martial (SPCM) of wrongfully selling, possessing, and transferring marijuana. As punishment, you were sentenced to confinement, forfeiture of pay, and reduction in rank.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You waived your right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The Chief of Naval Personnel recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that you be discharged from the Navy with an OTH characterization of service. The ASN (M&RA) approved the recommendation for your administrative discharge from the Navy. Ultimately, the SA approved the recommendation and directed your OTH discharge from the Navy by reason of misconduct due to drug abuse. On 1 July 1982, 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 to upgrade your discharge character of service and contentions that: (1) you "won" your court-martial, (2) you were lied to and coerced into signing papers for an Other Than Honorable (OTH), (3) you were told that if you tried to fight it you would receive a Bad Conduct Discharge, and (4) your lawyer would not return your calls when you were seeking advice concerning your administrative separation proceedings. 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 and SPCM conviction, 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. Additionally, 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 conduct had on the good order and discipline of your command. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions and, contrary to your assertion, your record documents that you were convicted by your SPCM.

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 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,