



**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. 3776-24  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 1 August 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 this 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Navy and commenced active duty on 6 January 2015. In March 2023, you tested positive for the use of THC. In the meantime, you had been placed into the Integrated Disability Evaluation System (IDES). On 12 April 2023, the Department of Veterans' Affairs (VA) issued proposed ratings within the IDES system. On 16 April 2023, you were found unfit by a Formal Physical Evaluation Board (FPEB) due to adjustment disorder with mixed disturbance of emotions and conduct (stable). On 20 April 2023, you received nonjudicial punishment (NJP) for violation of an order (article 92) by testing positive for THC. On 28 April 2023, President, PEB, informed Chief of Naval Personnel that

you were found unfit and that you should be placed on the PDRL at 70%. On 16 May 2023, your commanding officer reported the imposition of NJP to Navy Personnel Command. In his report of NJP, your commanding officer explained that you were advised of your right to refuse NJP and that you did not elect this right. You were thereafter advised of the initiation of administrative separation proceedings and your rights in connection therewith. You elected your right to an administrative board and your administrative board was held on 13 June 2023. The Board found that you committed misconduct and recommended you be discharged from the Navy with a discharge characterization of General (Under Honorable Conditions). On 23 June 2023, your legal counsel submitted a letter of deficiency to the convening authority, in which you made arguments as follows, in part:

By and through his counsel, [Petitioner] asserts that there was insufficient evidence in the record to show, by a preponderance of the evidence, that he knowingly used a controlled substance (i.e., THC-9). [Petitioner] further asserts that the Board's finding and recommendations are based on their misunderstanding of the pertinent rules and regulations, and impermissible bias against [Petitioner]. For those reasons, and the more detailed analysis below, [Petitioner] requests that you dismiss the finding and recommendations of the Board and order a new hearing; or, in the alternative, disapprove the Board's recommendations and forward this case to COMNAVPERSCOM with a recommendation to retain.

Ultimately, on 20 October 2023, you were discharged from the Navy with a General (Under Honorable Conditions) characterization of service in accordance with the findings of the administrative board.

In your petition, you request to be granted a service disability retirement in accordance with your FPEB findings, to have your discharge characterization upgraded, and to have your narrative reason for separation changed to Retirement. In support of your request, you contend that, while you were in service, you were recommended for medical retirement shortly before you were required to undergo a urinalysis, which subsequently indicated the presence of THC in your body. You argue that you had no prior history of drug involvement, do not associate with known drug user, and had knowledge of the upcoming urinalysis, making it highly unlikely that you would have knowingly and intentionally risked your medical retirement. You assert that in the weeks leading up to the urinalysis, you had been consuming "Egglife wraps," a product that you state contained hemp seeds, which is an argument that you apparently used at your administrative board. You also argue that during your administrative separation proceedings, the government failed to carry its burden of proof once you raised a claim of innocent ingestion and failed to establish that the urine sample which tested positive actually belonged to you by means of introducing chain of custody documents into evidence. Finally, you assert that the investigating officer conducting the preliminary inquiry into the alleged misconduct opined that it was highly unlikely that you knowingly ingested THC, and that the medical community and the Department of Defense have unequivocally recognized that consumption of products containing hemp can cause a positive urinalysis.

The Board carefully reviewed all of your contentions and all of the material that you submitted in support of your petition, and the Board determined there was insufficient evidence to grant you

the relief you requested. In reaching its decision, the Board observed that it relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In your case, the available records demonstrate that, with respect to your discharge, you availed yourself of substantial rights, including those of an assigned legal counsel and to be heard at an administrative board. The record reflects that your legal counsel represented you with vigor, which included a substantial letter of deficiency after your administrative board hearing. The letter of deficiency raised many of the same arguments that you make in your petition to this Board, including argument relating to your innocent ingestion defense as well as discussing the character reference letters that you provided. Therefore, the Board determined you provided insufficient to overcome the presumption of regularity in your case and determined you were properly processed for administrative separation and appropriately discharged with a General (Under Honorable Conditions) based on evidence that you abused a controlled substance. Further, the Board recognized that administrative discharge processing based on the abuse of a controlled substance authorizes the assignment of an Other Than Honorable characterization of service. Thus, the fact that your administrative board recommended that you receive a General (Under Honorable Conditions) characterization vice an Other Than Honorable characterization of service reflects that the administrative board already granted you some measure of clemency.

Finally, with respect to your request for a service disability retirement, the Board observed that in many circumstances, including yours, administrative separation processing for misconduct takes precedence over disability processing. In your case, the proximate reason for your discharge was due your misconduct as evidence by an NJP and the recommendations of an administrative board panel, and this administrative processing for misconduct took precedence over your disability processing. Based on its finding that you were appropriately discharged for drug abuse, the Board concluded that you remain ineligible for military disability benefits, including a disability retirement. Thus, upon its careful review, the Board did not observe any error or injustice in your naval records. 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,

8/22/2024

