



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. 4043-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 July 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).

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 on the evidence of record.

During your enlistment processing you disclosed pre-service marijuana use. You enlisted in the Navy and commenced a period of active duty on 20 July 1993. On 18 April 1996, you received nonjudicial punishment for the wrongful use, possession, etc., of controlled substances (THC). Consequently, you were notified of your pending administrative processing by reason of drug abuse, at which time you waived your rights to consult with counsel and to have your case heard before an administrative discharge board. On 29 April 1996, your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service adding, "[Petitioner] refused to abide by the Navy's 'Zero Tolerance' Drug Policy. His lack of discipline while on liberty makes him a liability to the Navy and deserving of an Other Than Honorable discharge." The separation authority approved the recommendation and, on 4 June 1996, 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 and your contentions that: (1) you broke a rule but needed help, (2) you were dealing with some issues, (3) you were dedicated, loyal, and hardworking and feel an Honorable discharge should be considered, and (4) it has been 27 years, you are a husband of 23 years, a dad, and a small business owner who is very patriotic and you want to fix your past and present faults. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health," boxes on your application but chose not to respond to the 3 June 2024 letter from the Board requesting evidence in support of your claims. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After a 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included 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. The Board noted that illegal drug use in any form is still against the Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, no discharge is upgraded merely because of the passage of time. Lastly, the Board noted you provided no evidence, other than your statement, to substantiate your contentions.

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. 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 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 is attached 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,

8/7/2024

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