



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. 4191-24
Ref: Signature Date

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Dear █

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 17 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, 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 Marine Corps and began a period of active duty on 11 July 1995. On 16 November 1995, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA). On the same date, you were counseled concerning violation to UCMJ article 86 leading to UA. You were advised that failure to take corrective action could result in administrative separation. On 4 January 1996, you began a second period of UA which lasted 49 days. On 16 April 1996, you tested positive to use of a controlled substance-marijuana. Consequently, you were charged with violation to UCMJ article 86 (UA) and article 112a (wrongful use of a controlled substance) and you requested an Other Than Honorable (OTH)

discharge characterization of service in lieu of trial by court martial. However, on 19 June 1996, you received a second NJP for a period of UA and wrongful use of a controlled substance-marijuana. On the same date, you were evaluated as a result of drug abuse and recommended for Level I Alcohol Impact classes. You were advised that failure to take corrective action could result in administrative separation.

On 26 August 1996, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you decided to waive your procedural rights. Your commanding officer recommended an OTH discharge characterization of service by reason of misconduct due to drug abuse. The separation authority approved the recommendation and you were so discharged on 2 October 1996.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 26 May 2011, the NDRB denied the your request after concluding that your discharge was proper as issued.

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 contention that: (a) you are currently suffering from Post Traumatic Stress Disorder (PTSD) and other mental health related issues, (b) you are in need of a discharge characterization upgrade in order to apply for veterans' benefits, and (c) your doctors are giving you a hard time to be tested and treated. The Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to the Board's request for supporting evidence of your claims. 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 fact it included 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 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 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,

7/3/2024

