



**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. 4255-24  
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.

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 on 3 May 2024, has carefully examined your current request. 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 enlisted in the U.S. Navy and began a period of active duty service on 29 September 2000. On 13 January 2001, you reported for duty on board the █  
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On 22 October 2003, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana above the established testing cutoff level. On 30 October 2003, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, to submit statements, and to request a hearing before an administrative separation board. Ultimately, on 7 November 2003, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and were assigned an RE-4 reentry code.

On 26 October 2020, this Board denied your initial petition for relief.

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 change to the basis for your separation. You contend that: (a) your request is made for reasons of material error and material injustice, (b) you suffered a material error in discretion when your chain of command initiated administrative separation rather than attempting to provide you with counseling or helping you deal with your stress in a productive way, (c) you suffered a material error in discretion by your chain of command's failure to assist you in working through your personal life, which had a direct impact on your military career, (d) you suffer, and continue to endure, the material error when his command discharged him with an OTH discharge, despite having an otherwise unblemished career, and (e) you have also suffered and will continue to suffer inherent injustice should the Board fail to consider your character as evidenced by letters from your peers. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board was troubled by your morphing drug use contentions over time. The Board noted that you have now proffered to BCNR two vastly different factual accounts of your marijuana use. First, you contended in your initial petition that: (a) your ex-wife started putting marijuana in

