

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

> Docket No. 4267-24 Ref: Signature Date



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 application on its merits. A threemember panel of the Board, sitting in executive session, considered your application on 6 May 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 enlisted in the Navy and commenced active duty on 1 August 1980. On 6 August 1981, you received non-judicial punishment (NJP) for drunk and disorderly conduct. On 29 October 1981, you received NJP for unauthorized absence (UA), willfully disobeying a superior petty officer, willfully disobeying a superior chief petty officer, and violation of a lawful order. On 2 November 1981, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct in disciplinary action and in processing for administrative discharge.

On 11 March 1982, you received NJP for disobeying a petty officer, disobeying a commissioned officer, and UA from your appointed place of duty. On 25 March 1982, you received NJP for failure to go to your appointed place of duty. On 9 August 1982, you received NJP for unauthorized use and possession of a controlled substance. On 23 September 1982, you received NJP for failure to obey a lawful order from a superior petty officer. On 1 July 1983, you

received NJP for disobeying an order from a superior petty officer, using disrespectful language toward a superior petty officer, and absenting yourself from watch.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You elected to consult with legal counsel and submit a statement, but waived your right to have your case heard by an administrative discharge board. The Separation Authority considered your statement and directed your discharge with an OTH characterization of service. You were so discharged on 15 August 1983.

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 change your discharge characterization of service and your contentions that you struggled with drugs and alcohol, did not know where to go for help, and would like a discharge upgrade to bring honor to your family. For purposes of clemency and equity consideration, the Board considered your statement, advocacy letters, and copies of documents from your service record that you provided.

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, 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge due to a pattern of misconduct.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

