



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

██████████
Docket No. 4323-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 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).

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.

You enlisted in the U.S. Navy and began a period of active duty on 16 June 2000. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program.

In 2001, you were arrested for illegally crossing the ██████████ border and vehicular assault. Later, you received non-judicial punishment (NJP), on 19 April 2001, for unauthorized absence and disorderly conduct, drunkenness. Following your NJP, you were issued a counseling warning and advised further deficiencies in your performance or conduct may result in

disciplinary action or in processing for administrative discharge. On 2 May 2001, you received your second NJP for wrongful use of amphetamine and methamphetamine. You elected to appeal the NJP and, on 21 May 2001, it was denied. Consequently, you were notified of administrative separation processing for drug abuse and elected an administrative discharge board (ADB). The ADB found you committed misconduct due to drug abuse and recommended your discharge with a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, you were so discharged on 19 June 2001.

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 changes to your narrative reason for separation and reentry code. You contend your urinalysis erroneously determined you tested positive for drug abuse since the social security number was incorrect on the bottle and you were discharged in error. 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. Further, the Board considered that you were already given a large measure of clemency when the Navy chose to separate you with a GEN characterization for misconduct that normally warrants an Other Than Honorable characterization of service.

Finally, the Board was not persuaded by your contention that you were wrongfully discharged based on an erroneous urinalysis. First, because the drug lab message identifies your positive urine sample with your correct social security number. Second, because the Board 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. The Board noted you provided no evidence, other than your statement, that your urinalysis was not conducted properly.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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. 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,

5/30/2024

