



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. 4633-24
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 1 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).

You enlisted in the Navy and commenced a period of active duty on 22 October 1991. Upon your entry onto active duty, you were briefed on the Navy's drug and alcohol abuse policy and, on 18 March 1992, you signed the Navy's drug abuse policy statement of understanding.

In July 1993, an informant implicated you and other service members for possessing and/or using controlled substances onboard █ (█). Upon questioning, you confessed to bringing five bags of marijuana onboard █ while the ship was in █, █ and you admitted to smoking marijuana with other suspected service members. Further, an authorized a permissive search of your locker which uncovered four plastic baggies of a green leafy substance that subsequently tested positive for THC and you tested positive for THC after a urinalysis.

On 11 July 1993, you received nonjudicial punishment (NJP) for wrongfully introducing over 30 grams of marijuana onto a naval vessel with intent to distribute, wrongfully possessing more than 30 grams of marijuana onboard a naval vessel, and wrongfully using marijuana while onboard a

naval vessel. Consequently, you were notified of your pending administrative discharge board 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 20 July 1993, you were evaluated by a senior medical officer and found to be nondependent on drugs. Ultimately, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service for drug abuse and, on 6 August 1993, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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) "I believe had I not had to experience such an ordeal. I would or event would not have taken place the lead up to my separation and disposition today," (2) you were incarcerated and there was no one to help you, and (3) at no point were you offered any help, counseling, or the aid of a social worker until recently by a Department of Veterans Affairs employee. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the 25 April 2024 letter from the Board requesting evidence in support of your claim. For purposed of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214.

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 multiple drug offenses. The Board determined that illegal drug use, drug possession, and drug trafficking 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 is not permitted for recreational use while serving in the military. Further, the Board noted that the misconduct that led to your administrative separation was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority chose to impose NJP instead of a trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board further noted that 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,

7/19/2024

