



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. 6228-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 August 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 this 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).

During your enlistment processing you disclosed marijuana use, an alcohol related offense, and numerous traffic violations. You were granted a local waiver, enlisted in the U.S. Navy, and began a period of active duty on 14 November 1989. On 11 December 1989, you were issued a Pg. 13 administrative remark for your post enlistment disclosure of preservice drug abuse. These remarks also advised you that any further deficiencies in your performance and/or conduct may result in processing for administrative separation.

On 28 January 1993, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA). On 2 September 1993, you received a second NJP for the wrongful use of marijuana. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of drug abuse. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the

separation authority (SA) recommending your administrative discharge from the Navy under Other Than Honorable (OTH) characterization of service. Ultimately, the SA directed your OTH discharge from the Navy by reason of misconduct due to drug abuse and you were so discharged on 8 November 1993.

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 upgrade your discharge character of service and contentions that: (1) you were in an accident involving a motorcycle you borrowed from a friend that resulted in broken bones, ligaments and cartilage, (2) while you were recovering, your mother informed you that your diabetic father's leg was scheduled for amputation, and you were reminded that his right leg had already been amputated years prior, (3) once you returned home to be with your family, the emotional pain became overwhelming, leading you to decide to smoke a marijuana joint on your fourth day home, (4) after your discharge, you became a contributing member of society, got married, and are now a parent, and (5) your daughter is currently a faculty member at █. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application. Please be aware that, although you mentioned attaching a copy of your rental agreement and marriage certificate, these items were not included with your application.

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. Additionally, 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. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your command. In addition, the Board determined that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Finally, the Board observed 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 characterization. While the Board carefully considered the evidence you submitted in mitigation, 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,

9/13/2024



Executive Director

Signed by: █