



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. 6348-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 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, 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 began a period of active duty on 12 January 2000. Between 2 August 2001 to 21 September 2001, you had four periods of unauthorized absence (UA) totaling 25 days. On 11 January 2002, you received nonjudicial punishment (NJP) for the periods of UA and missing movement. On 30 January 2003, you began a fifth period of UA which lasted six days. On 5 February 2004, you received an evaluation report and counseling record which indicated that you were subject to administrative separation from the Navy due to pattern of misconduct, commission of a serious offense, and drug abuse. On 9 January 2004, you received a second NJP for three periods of UA.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 5 February 2004 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct" your separation code is "HKK," and your reenlistment code is "RE-4." Your separation code is consistent with a discharge due to drug abuse.

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 contentions that: (a) it has been over 20 years since you were discharged from service, (b) you were told that your discharge characterization would automatically upgrade six months after your discharge, and (c) you want your discharge to be upgraded so that you may receive all the benefits that a veteran should receive after serving. 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 and performance evaluation, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offenses. 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 the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. Lastly, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years.

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. 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 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,

8/13/2024

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Executive Director

Signed by: █