



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. 6910-24
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 30 October 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, 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 20 July 2001. On 1 May 2003, you were issued administrative remarks retaining you in the naval service, documenting your unauthorized absence (UA), insubordinate conduct, failure to obey an order or regulation, and advising you that further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 3 July 2003, after consulting with counsel, you submitted a request for an Other Than Honorable (OTH) separation in lieu of trial by court-martial (SILT) for two specification of UA,

two specifications of wrongfully using marijuana, and breaking restriction. On 11 July 2003, your commanding officer forwarded your request to the separation authority (SA) recommending approval and adding, “[Petitioner] has the aggravating factors of breaking restriction and using marijuana while in a restricted status. His misconduct clearly indicates that he has no potential for further naval service.” Ultimately, your SILT request was approved, and on 8 August 2003, you were so discharged.

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 since your discharge, you have been a dedicated and positive member of society. You seek an upgrade to your discharge, so it does not limit your ministry work or career opportunities within the federal government. Currently, you are awaiting a referral from your local VA (Department of Veterans Affairs) for a sleep study, although the nearest facility is 2-3 hours away. You are determined to secure the care you need to be present for your children and address your health concerns before it is too late, and you deeply regret past mistakes, which have instilled valuable life lessons. Additionally, the Board noted you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to respond to the 2 July 2024, letter from the Board requesting evidence in support of your claim. The Board also noted that, although your application states you submitted a ministry ordination, certified, Adobe engineering program documents, and proof of full-time college enrollment, these items were not received. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application; which comprised of your personal statement and DD Form 214.

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 SILT request, 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 the misconduct that led to your request to be discharged in lieu of trial by court-martial was likely 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 agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, 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.

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 liberally and 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 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,

11/20/2024

