



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. 6940-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 4 October 2024, has carefully examined your current request. 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You previously applied to the Board contending that the death of your father affected your behavior and contributed to your misconduct. Your request was considered on 31 January 2017 and denied. The facts of your case remain substantially unchanged.

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 and contentions that you believed you were always eligible of Department of Veterans Affairs (VA) medical benefits due to having and, in February of 2016, sought health care from the VA for disabilities you purport to have been sustained during your military service. You further state that you were notified by the VA that you were not eligible for disability benefits due to your characterization of service

and it was the first time you were made aware that your discharge was a hindrance to disability benefits. You also argue that drug addiction necessitates treatment, rather than punishment, and that your offense would be considered less severe under today's policies in light of wide-spread legalization. For purposes of clemency and equity consideration, you submit evidence of the VA's character of discharge decision and denial of your eligibility and the naval message which referenced your entitlement to treatment incident to discharge.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your five non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug 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. 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 found that, contrary to your assertion that drug abuse offenses would be treated less severely under today's policies, a single drug offense under today's policies would give rise to processing for administrative separation with the high likelihood of a discharge under Other Than Honorable (OTH) conditions, especially when a service member's record, as yours, has other aggravating misconduct such as multiple theft offenses. 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. 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.

With respect to your previous denial of certain rehabilitation and mental health services, the Board noted that you indicate having applied to the VA in 2016. Although such matters are beyond the scope of authority of the Board, the Board noted that recent changes to law have expanded the VA's authority to provide certain benefits, even for members who received discharges under OTH conditions. The Board believes that you may be eligible for some services for which you were previously denied and recommends that you contact your nearest VA services center to inquiry as to potential eligibility.

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,

10/29/2024

