

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 7286-24 Ref: Signature Date



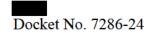
Dear Petitioner:

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 2 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Navy and commenced a period of active duty on 28 June 1990. The next day, you were notified of the Navy's policy regarding drug and alcohol abuse. On 20 August 1991, you were apprehended for possession of marijuana. On 24 October 1991, you received non-judicial punishment for disobeying a senior petty officer, failure to obey a lawful general order, wrongful use of a controlled substance, false or unauthorized pass offenses, and two specifications of unauthorized absence (UA) from appointed place of duty. Consequently, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to commission of a serious offense. You elected right to consult with counsel and a hearing of your case before an administrative discharge board. In the meantime, you received your second NJP, on 21 November 1991, for two specifications of breaking restriction. On 13 December 1991, an ADB convened and recommended your separation with an Other Than Honorable (OTH) character of service by reason of misconduct. However, while your administrative separation processing was ongoing, on



20 May 1992, you were convicted at a Special Court Martial (SPCM) for UA, failure to obey a lawful order, signing a false official document, three specifications of wrongful use/possession of a controlled substance-marijuana, and wrongful possession and purporting another's military identification card. You were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). Ultimately, you were so discharged on 13 August 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 characterization of service and contentions you should not have had a conviction by SPCM. For purposes of clemency and equity consideration, the Board noted you did not provide 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and it included multiple 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. Further, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which ultimately led to your BCD. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contention of an erroneous conviction.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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.

