



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. 7577-24

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 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 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 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 U.S. Navy and began a period of active duty service on 1 November 1989. On 7 December 1988, you signed and acknowledged the "Drug and Alcohol Abuse Statement of Understanding." Your pre-enlistment physical examination on, 12 December 1988, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 3 February 1992, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana (THC). On 20 February 1992, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (THC). You did not appeal your NJP. On 21 February 1992, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel and elected your rights to submit statements and to request an administrative separation board (Adsep Board).

On 3 March 1992, you underwent a drug and alcohol evaluation. A substance abuse counselor (SAC) determined that you did not appear to be drug dependent or have an established pattern of alcohol abuse, but you did appear to have an established pattern of drug abuse. The SAC noted that you showed poor potential for further useful service, and poor potential for treatment. The SAC also noted during your assessment that you expressed a desire to be discharged from the Navy. The SAC recommended that you be administratively separated given that you did not possess exceptional potential.

On 10 March 1992, you also underwent a psychiatric evaluation following your positive urinalysis. The Navy Medical Officer (MO) determined that your mental status examination was within normal limits, and that you did not exhibit any sign of organic dysfunction at such time. During the examination, the MO noted the following:

...member reported strong motivation to remain in the Navy, and denied any kind of drug or alcohol abuse. He stated that he most likely had learned cultural responses similar to drug abusers from his friends, but that he never abused drugs, himself...In the consultant's opinion, member is a questionable historian. Although certain behavioral traits can be learned from one's peers, it is unlikely that member has not participated in some form of behavior during peer interactions.

On 1 April 1992, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel and you also provided sworn testimony on your own behalf. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you committed misconduct and that you be separated with an under Other Than Honorable (OTH) discharge characterization but voted to suspend the separation for one year. On 24 April 1992, your command removed your Air Traffic Controller designation. On 2 June 1992, the Separation Authority approved and directed your OTH separation for misconduct without any suspension. On 11 June 1992, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 12 June 1992, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

On 2 March 1998, the Naval Discharge Review Board denied your initial discharge upgrade application.

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 to qualify for veterans benefits. You contend that you deserve relief based on: (a) the length of your enlistment, and (b) the amount of time since your separation date. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's request for supporting evidence of your claims. For purposes of clemency and equity consideration, the Board considered the entirety of the documentation you provided in support of your application, which consisted solely of the written information you included in blocks 13-15 of your DD Form 149 petition.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use is still against Department of Defense regulations and its use in any form is still not permitted for recreational use while serving in the military. The Board also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions. 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and blatant disregard for good order and discipline clearly merited your discharge. 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.

Sincerely,

10/30/2024

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