



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. 8142-24
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 4 December 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).

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 Navy and began a period of active duty on 29 July 1996. On 23 October 1998, you received non-judicial punishment (NJP) for wrongful use of marijuana. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You elected your right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 3 December 1998, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. Prior to the commanding officer's

recommendation (CO), you received your second NJP, on 11 December 1998, for three specifications of conspiracy and two specifications of failure to obey order or regulation. The CO forwarded your administrative separation package to the separation authority concurring with the ADB recommendation. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] participated in a random urinalysis on 14 Sep 98. Her sample tested positive for THC. She admitted her guilt at NJP on 23 Oct 98. During her stay in the restricted barracks, she conspired with other restricted personnel to smuggle whiskey into the barracks. [Petitioner] returned to NJP and admitted her guilt. On 3 Dec 98 [Petitioner's] ADB found misconduct on all offenses and recommended an OTH characterization of service. I most strongly concur. [Petitioner] deserves an OTH discharge.”

The separation authority approved the recommendation and you were so discharged on 2 February 1999.

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 your wrongful use of a controlled substance was a one-time offense and you received a threat prior to your discharge. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

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 NJPs, 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 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 considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. The Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Furthermore, contrary to your contention that you only committed a single offense, the Board noted that you continued to commit misconduct after your NJP for drug abuse. Regardless, there is no precedent within this Board's review, for minimizing a one-time incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation.

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 commends your post-discharge accomplishments and 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 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,

1/6/2025

