



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

█
Docket No. 8824-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 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).

You enlisted in the U.S. Navy and began a period of active duty service on or about 5 December 2001. Your pre-enlistment physical examination, on 30 August 2001, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 10 February 2006, a Navy Drug Screening Laboratory message indicated you tested positive for methylenedioxymethamphetamine ("MDMA," aka "Ecstasy"). On 16 February 2006, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (MDMA). You did not appeal your NJP.

On 8 March 1996, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit statements, and to elect an administrative separation board. Ultimately, on 3 April 2006, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

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 and change to your reason for separation. You contend that: (a) your chain of command made a material error in judgement in determining that your positive urinalysis was a case of drug abuse, rather than a case of unknowing ingestion, (b) you are an honorable man who was separated for unknowing consumption of a controlled substance, which was an isolated incident as exemplified by your service record, (c) the pursuit of your separation was against the best interest of the Navy and constituted an error of judgement that continues to subject you unjust consequences, and (d) your OTH has robbed you of your good name and the adverse consequences from your discharge have stigmatized you in the present day as well. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

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 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.

The Board disagreed with your proffered evidentiary argument/contention of innocent ingestion. First, you were found guilty of MDMA use at NJP. If you disputed such findings, you had every right to appeal your NJP to higher authority. However, the Board noted that you did not appeal your NJP at such time and was not willing to re-litigate the well-settled facts and findings of your case. The Board determined that your proffered arguments were insufficient overcome the presumption of regularity regarding your drug abuse. The Board also noted that when you were again afforded an opportunity to present any purported innocent ingestion defense at an administrative separation board, you again waived your right to such a hearing.

Additionally, the Board concluded that any contentions regarding your command allegedly making any material errors of judgment and/or discretion to be without merit and not persuasive. The Board determined that there was no credible and convincing evidence in the record regarding any purported command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your NJP and subsequent administrative separation. The Board determined that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge.

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 disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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.

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,

12/23/2024

█