



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

██████████
Docket No. 9064-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 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 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 Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted in the Navy and commenced active duty on 28 December 1994. On 6 October 1997, you commenced a period of unauthorized absence (UA) that ended with your surrender on 7 October 1997. On 3 November 1997, you commenced a second period of UA that ended with your surrender on 4 November 1997. On 5 December 1997, you commenced a third period of UA that ended with your surrender on 12 December 1997.

On 15 January 1998, you were convicted at Summary Court-Martial (SCM) of violating article 112a of the Uniform Code of Military Justice (UCMJ) for wrongful use of marijuana. You were sentenced to forfeiture of \$692 pay per month for one month, reduction in paygrade to E2, and confinement for 30 days. Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse and commission of a serious offense. You waived your rights in the process except for the right to obtain copies of documents used to support the basis for your separation. Your

commanding officer recommended your discharge in accordance with your notification and, after appropriate review and approval, you were so discharged on 12 February 1998.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 6 December 1999, based on their determination that your discharge was proper as issued.

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 characterization to qualify for veterans' benefits and your contentions that you were a rising star as a Radio Man operating NAVMACS and would like an upgrade because you believe your lapse of judgment was caused by anxiety and depression that you had been dealing with since 1994. The Board noted you did not provide any evidence to support your claims of a mental health condition. For purposes of clemency and equity consideration, the Board noted you did not provide any documentation describing post-service good character or accomplishments.

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 periods of UA and SCM, outweigh the 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. 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 observed that you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. The Board disagreed with your assessment that your discharge was due to a single lapse in judgement. 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. 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,

1/7/2025

