



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

██████████
Docket No. 9571-24
Ref: Signature Date

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Dear ██████████:

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 25 November 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 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 commenced active duty on 13 February 1969. You served a period of continuous Honorable service through 26 May 1985 and immediately reenlisted on four occasions. Your final enlistment began on 27 May 1985.

On 31 October 1985, you were convicted at Special Court-Martial (SPCM), of violating Article 112a of the Uniform Code of Military Justice (UCMJ) for wrongful use of marijuana during two separate periods of time. You were sentenced to reduction in paygrade to E6 and forfeiture of \$500 pay per month for one month. Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse (use). You consulted with legal counsel and elected your right to have your

case heard before an administrative discharge board (ADB); however, on 21 March 1986, you waived your right to that previously elected ADB. Subsequently, your commanding officer recommended your separation with an OTH characterization of service for drug abuse. The separation authority approved the recommendation, and you were so discharged on 27 May 1986.

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, be reinstated to the rank of E7, and to have disparaging remarks removed from your final DD Form 214. You contend that you are certain you were never afforded your Miranda rights when accused of the misconduct leading to your discharge, that all follow-up drug test samples taken while you were awaiting court-martial were negative, that during those tests you were afforded the chance to inspect the bottles prior to providing your sample, which was not done with the original test, that the prosecution in your court-martial provided a star witness female student who you had previously exposed as being involved in a cheating scam and as a result was dropped from the program, that you believe her revenge was her fabricated story that you smoked marijuana with her – which you state never happened, that when your defense attorney attempted to discredit this witness, she was told she would be held in contempt of court, that as a result, your attorney never brought up the argument about the witness and advised you not to take the stand in your own defense, that the presiding judge recommended reduction in rate to E6 and an OTH as suspended sentences, but the Captain of the Service School Command did not agree, that you were so disgusted by the way the matter was handled that you gave up on your defense and had to convince the court of your wrongdoing so you could move forward with your life and focus on family and future, and that a few months after discharge, you were successfully hired by ██████████ ██████████, despite their knowledge of your court-martial conviction and unfavorable discharge. For purposes of clemency and equity consideration, the Board noted you did not provide any documentation describing post-service accomplishments or advocacy letters.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved two 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. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command, particularly given your rank, as a Chief Petty Officer, at the time of your misconduct. Finally, the Board noted you did not provide evidence, other than your statement contained within your contentions, to substantiate your claims or support any argument for clemency. Therefore, the Board determined the presumption of regularity applies regarding your court-martial conviction and the evidence considered in support of it.

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.

Lastly, the Board observed that you checked the "Reprisal/Whistleblower" box on your application but provided no evidence in your Official Military Personnel File supporting this claim. The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

1/9/2025

