



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

Docket No. 9837-24
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 18 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, 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 after disclosing pre-service offenses of writing a check with insufficient funds and possession of marijuana and commenced active duty on 26 September 1980. On 17 September 1981, you commenced a period of unauthorized absence (UA) that ended on 3 October 1981. On 17 October 1981, you received non-judicial punishment (NJP) for UA.

On 19 July 1982, you received a psychiatric consult where you disclosed that you worried you might go UA. You were diagnosed with a low-grade personality disorder. On 10 August 1982, you were diagnosed with depression and disclosed daily marijuana use. You were monitored by

medical daily and admitted to the hospital on 18 August 1982. While admitted, you disclosed that you had a pre-service history of depression. You were released from the hospital on 25 August 1982 with a diagnosis of adjustment disorder of adult life with depressed mood, now resolved. On 26 August 1982, your commanding officer was notified that you were dependent on drugs, used marijuana daily, and the frequency of your lysergic acid diethylamide (LSD) use was increasing. You were referred for a substance abuse evaluation and transferred to Naval Air Station Miramar for treatment. You were also issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct prior to transfer. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 16 December 1982, you successfully completed treatment and were returned to full duty. On 17 December 1982, you were issued Page 13 counseling concerning deficiencies in your performance and/or conduct, specifically illicit drug use. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 3 March 1984, you received NJP for wrongful use of marijuana. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to drug abuse. The separation authority concurred with the ADB and you were so discharged on 31 October 1984. You were offered, and declined, pre-discharge in-patient treatment.

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 change your discharge characterization of service and your contention that you performed at high standards while serving. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your commands. Finally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which ultimately led to your OTH discharge.

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,

12/13/2024

