



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

Docket No. 10521-24
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 12 February 2025. 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 22 August 1997. On 18 September 1998, you completed an extensive outpatient treatment program for Alcohol dependence at the Substance Abuse Rehabilitation Department, Naval Medical Center, San Diego. On 1 October 1998, you were issued an administrative remarks (Page 13) retention warning formally counseling you concerning deficiencies in your performance and conduct. Specifically, your sub-standard performance in the case of an alcohol related incident. The Page 13 expressly advised you that failure to complete all aspects of your aftercare program, you may be considered for administrative separation. On 21 September 1999, 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 and substance abuse rehabilitation failure. You were informed of the basis for this recommendation and that the least favorable characterization of service you may receive is Under Other Than Honorable (OTH) conditions. You elected your procedural right to consult with counsel and waived your right to present your case to an administrative discharge board. The commanding officer (CO) recommended to the separation authority your administrative discharge from the Navy with an OTH characterization of service. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] has a significant history of disciplinary problems since reporting aboard my command in November 1997. He has accumulated numerous negative counseling reports for various offenses including unauthorized absence, dereliction of duties, unsatisfactory performance and military bearing.

I effected [Petitioner's] separation from the Navy with an Other Than Honorable characterization of service based on reason of Misconduct - Drug Abuse and Substance Abuse Rehabilitation Failure.

The separation authority approved the recommendation, and you were so discharged on 28 October 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: (1) you were pressured to take the anthrax shot which mentally led to your heavy drinking and "weed" usage, (2) the situation took its toll on you and you were only 20 years old when you began drinking and using marijuana, (3) the anthrax shot was made mandatory to take which mentally broke you down; you did not want to take the shot because you believed that it was harmful, (4) the Navy was threatening to give you a dishonorable discharge if you refused the anthrax shot, and (5) you lost your benefits because of your use of marijuana. Additionally, the Board noted you checked the "Other Mental Health" box on your application, but you did not respond to the Board's request for evidence in support of this claim. 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 NJP, 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 and were properly discharged based on your misconduct. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions and, 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 determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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 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,

3/10/2025

