



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

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Docket No. 10637-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 24 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Reserves and began a period of active duty on 19 April 1989. Upon your enlistment, you admitted preservice use of marijuana. On 31 May 1991, you tested positive for the use of marijuana. On 1 June 1990, you began a period of unauthorized absence (UA) which lasted three hours, 45 minutes and resulted in nonjudicial punishment (NJP) on 7 June 1990. On 1 August 1990, you received a second NJP for willfully disobeying a lawful order, using provoking gestures towards a senior petty officer, drawing back a closed fist towards a senior petty officer, and assaulting a petty officer by pushing. On 11 February 1991, you began a

second period of UA which lasted 11 days and resulted in NJP on 11 March 1991. On 29 March 1991, you received a third NJP for wrongful use of a controlled substance-marijuana after testing positive on a second urinalysis.

On 1 April 1991, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. You decided to waive your procedural rights, and your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation and ordered your discharge by reason of misconduct due to commission of a serious offense. On 30 May 1991, you were so discharged.

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 contention that: (a) you were assigned to galley duty without adequate training, (b) you were emptying the garbage cans over the back of the fantail when the 16 inch gun fired while you walked nearby, (c) you were not wearing hearing protection and both of your ear drums burst, (d) you were checked out by a medic but there was not much to do since your ship was still out at sea, (e) following the incident, your hearing was gone for several days and you began to experience high levels of anxiety, (f) someone introduce you to marijuana and suggested that it would help you with your anxiety and the ringing in your ears, (g) you were not encouraged to seek legal advice and did not waive your rights to a hearing by an Administrative Discharge Board. 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 these 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 included drug related 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. Further, the Board also noted you provided no evidence, other than your personal statement, to substantiate your contentions. Contrary to your contention that you were not offered legal advice and did not waive your procedural rights, the Board noted your records indicate you stated a desire not to speak to legal counsel and waived your rights to a board. Additionally, again contrary to your statement that you were introduced to marijuana after injuring your ears, the Board observed you entered the Navy with a preservice admission of marijuana use and previously tested positive for marijuana use prior to your second positive urinalysis and administrative separation. Therefore, the Board questioned your credibility and was not persuaded by your unsupported contentions.

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 that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

3/17/2025

