



Docket No. 10685-24
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 19 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).

You enlisted in the Navy and began a period of active duty on 8 September 1980. On 27 March 1981, you received non-judicial punishment (NJP) for possession of marijuana. On 7 April 1981, you were issued an administrative remarks (Page 13) retention warning. The Page 13 expressly advised you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge. On 4 May 1981, you were medically determined not to be physically or psychologically dependent on drugs or alcohol. On 19 May 1981, you received your second NJP for unauthorized absence (UA). Additionally, you were issued a Page 13 retention warning.

On 3 February 1982, you received your third NJP for damaging non-military property. On 7 July 1982, you received your fourth NJP for absence from your appointed place of duty. On 30 October 1982, you were arrested by civilian authorities for possession of LSD and a dangerous weapon. On 11 November 1982, you were arrested by civilian authorities for

possession of LSD with intent to distribute and possession of marijuana. Ultimately, you were found guilty of felony possession of LSD with intent to distribute.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to involvement of a discreditable nature with civil authorities as evidenced by your conviction by Alameda County Superior Court for felony possession of LSD with intent to sale. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] is of no value to this command or the Navy. He is a detriment to good order and discipline and serves no useful purpose. His recent civilian felony conviction is the culmination of an otherwise undistinguished enlistment. Strongly recommend immediate discharge Under Other Than Honorable Conditions.

The separation authority approved the recommendation and you were so discharged on 1 February 1983.

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 "based on 40 years of post-discharge employment, schooling, and honorable service to family and community" and contentions that: (1) your discharge was due to a mistake that you made at a young age which you took full responsibility for, (2) your arrest was a one-time incident that you regret, (3) you were always respected and trusted by your chain of command, and (4) since your discharge from the Navy, you have led a productive and family focused life and have your own business. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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 and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely discrediting nature of your civilian conviction. Further, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Finally, the Board was not persuaded by your argument that your characterization of service was due to a single mistake. As explained in your summary of service, your military record is replete with misconduct.

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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/13/2025

