



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

Docket No. 10713-24
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 17 March 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 commenced active duty on 28 July 1978. After a period of continuous Honorable service, you immediately reenlisted and commenced a second period of active duty on 9 November 1980.

On 10 February 1981, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 11 March 1982, you received NJP for dereliction in performance of duties. On 1 November 1982, you received NJP for wrongful possession of one ounce of marijuana; however, this NJP was later marked erroneous on your performance record. On 19 March 1983, you received NJP for wrongful use of marijuana. On 5 May 1983, you received a letter of substandard service. 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 9 May 1983, you were issued an administrative remarks (Page 13) indicating you were disqualified for submarine duty by reason of unreliability due to drug use. On 13 December 1983, you were issued Page 13 counseling regarding UA and missing ship's movement. On

25 April 1984, you received NJP for dereliction in performance of duty. On 13 March 1985, you received NJP for dereliction in performance of duty and two specifications of UA. Additionally, you were issued Page 13 counseling concerning deficiencies in your performance and/or conduct. 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 30 July 1985, your command received notification from the Navy Drug lab that your urine sample tested positive for tetrahydrocannabinol (THC). On 12 September 1985, you were placed in the rehabilitation testing program with weekly urine testing for six months. On 19 September 1985, you received NJP for wrongful use of marijuana and were subsequently placed in Level I substance abuse aftercare. On 1 October 1985, your command received notification from the Navy Drug Lab that your urine sample tested positive for THC. On 9 October 1985, you were referred to the Counseling and Assistance Center for a substance abuse evaluation. On 16 October 1985, your command received notification from the Navy Drug Lab that your urine sample tested positive for THC. On 30 October 1985, you received NJP for wrongful use of THC and wrongfully using provoking words.

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 and commission of a serious offense. You elected to consult with legal counsel and waived your right to have your case heard by an administrative discharge board. On 8 November 1985, you were evaluated by a medical professional as a psychologically dependent repetitive marijuana user and recommended for administrative discharge. The same day, you submitted a statement to the separation authority, indicating that your alleged drug use did not affect your job performance and that your only problem with drugs stemmed from the Navy's problem of dealing with drug abusers. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 6 December 1985. Prior to your discharge, you declined in-patient alcohol/drug rehabilitation 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 contentions that your performance never suffered due to drug abuse, the "perception of misconduct was solely based on the results of a chemical analysis of [your] urine," you were never found to be in possession of or under the influence of any illegal substance, and you desire Department of Veterans Affairs (VA) benefits. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the 30 October 2024 letter from the Board requesting evidence in support of your 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 NJPs in your final enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that at least three of your NJPs involved a drug offense. The Board determined that illegal drug possession and 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 observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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. Further, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Contrary to your contention that you did not abuse drugs, the Board you tested positive for THC on at least three occasions, were diagnosed as psychologically dependent on marijuana and were offered, and subsequently declined, in-patient treatment prior to discharge. Finally, 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 that your request does not merit relief.

Finally, you assert the Department of Veterans Affairs (VA) determined you were ineligible for veterans' benefits based on your assigned characterization of service. While determining VA benefits eligibility falls outside the scope of the Board's authority, it noted that you are likely eligible for treatment and compensation and pension benefits based on your first period of continuous Honorable service. The Board recommends you contact your nearest VA office to inquire about your eligibility status and provide them with a copy of your DD Form 214 from your first enlistment period.

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,

4/7/2025

