



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. 10939-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 10 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 commenced active duty on 29 November 1979. On 20 September 1980, you received non-judicial punishment (NJP) for possession of marijuana. As a result, you were issued an administrative remarks (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. However, on 15 June 1981, you again received NJP, on this occasion for attempted larceny. On 25 August 1981, you received a third NJP for possession of a hash pipe. On 1 September 1981, you received a fourth NJP for possessing marijuana.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities and drug abuse. You waived all rights available to you in the process; including your right to request your case be heard before an Administrative Discharge Board (ADB). On 23 November 1981, you were discharged with an Under Other than

Honorable Conditions (OTH) characterization of service for frequent involvement of a discreditable nature with military authorities.

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 you enlisted at shortly after turning 17 and reconnected with old friends while docked in the ██████████, you fell into a pattern of marijuana use after being influenced by those around you, your misconduct can be seen as youthful indiscretion due to external negative influences rather than a reflection of your overall character or potential as a service member, your OTH discharge was overly harsh, the military environment in the 1990's was often strict in handling drug-related offenses, it prioritized discipline and order without fully taking into account age, vulnerability, or potential for rehabilitation, you might have been given the opportunity under current policies to correct your behavior, receive support, and perhaps continue your service, you have dedicated your life to building a better future for yourself and your family in the 40 years post-discharge, you worked hard in the tire business and as a truck driver, you have been married to your wife for many years and raised a daughter, have served as a father figure to your grandson, you returned to school at the age of 48 to earn your GED, and demonstrated your commitment to self-improvement and lifelong learning. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your legal brief with exhibits.

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 multiple 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 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 noted you were given multiple opportunities to address your conduct issues but you continued to commit misconduct; which led to your unfavorable 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. Lastly, the Board was not persuaded by your contention that the outcome of your case would have been different under current Navy policies. The Board noted that administrative separation processing is still mandatory under current policies and you committed three separate drug related offenses during your relatively brief period of active duty service.

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 and commends you for your post-service character and accomplishments, 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 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,

3/12/2025

