



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

[REDACTED]
Docket No. 12308-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 case 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 22 June 1998. On 26 July 1999, you accepted nonjudicial punishment (NJP) for a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to use of the controlled substance, marijuana.

Although the notification for your proposed administrative separation processing was not retained in your official military personnel file (OMPF), your separation code indicates that you elected to voluntarily waive your right to a hearing before an administrative separation board

upon being notified of processing by reason of misconduct due to drug abuse. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved by Commander, Carrier Group ██████████ on 10 August 1999.

Unfortunately, other documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy, on 12 August 1999, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "Misconduct (Drug Abuse)," separation code of "HKK1," and reenlistment code of "RE-4." As previously mentioned, your separation code is consistent with a discharge due to drug abuse.

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 and change your narrative reason for separation to "Secretarial Authority." You contend that your post-service character and accomplishments warrant consideration of an upgrade in the context of clemency factors. You state that you were young and made a single mistake but have paid for that mistake and have shown tremendous growth and maturity in your professional field of information technology, with your children whom you support by volunteering to assist with their sport activities, and within your community by helping to organize charity events for your wife's sorority. You also argue the applicability of multiple factors outlined in the Wilke Memo; to include positive post-conviction conduct and job history, great candor, acceptance of responsibility, remorse, the relative lack of severity of your misconduct, your positive character references and letters, the length of time since your misconduct, and the fact that your misconduct was youthful indiscretion. Additionally, although you admit to making a lapse in judgment by smoking marijuana, you appear to blame your random drug test urinalysis on having "confided" in your master chief about feeling depressed after being injured in a softball game and making the poor decision to use marijuana; which you claim "was not considered serious misconduct" even back then and did not warrant an OTH discharge. You further allege that you were "humiliated" by your leadership by being assigned to work with the cooks "as a form of punishment." For purposes of clemency and equity consideration, the Board considered the totality of your application.

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 NJP and positive urinalysis, 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. 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. Additionally, the Board was not persuaded by your arguments that you were punished through humiliation with your assignment to the galley. The Board observed that, due to the sensitivity of the duties you performed as a radioman, you were granted an interim Top Secret security clearance on 14 January 1999; which appears to have been permitted to expire

without renewal on 14 July 1999. This was concurrent with the report from the Naval Drug Laboratory of your positive urinalysis and consistent with a determination that you were no longer qualified or suitable for your former duties. As such, the Board found no error or injustice in your reassignment to alternate duties and rejected your argument that cooking duties constituted "punishment." The Board considered that numerous junior enlisted Sailors regularly augment the ship's galley staffing and, on many Navy vessels, are often required to do so prior to assuming their ultimate duties. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. In your case, the Board further noted your record of meritorious service was minimal and insufficient to offset your serious drug related misconduct; particularly since you were discharged approximately seven months after reporting to your vessel and served less than 14 months on active duty. Additionally, there is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation.

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 appreciates your expression of remorse, 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 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 is attached 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,

4/8/2025

