



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

Docket No. 1204-25
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 28 May 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 and began a period of active duty on 23 February 1989. On 8 June 1993, you received non-judicial punishment (NJP) for wrongful use of marijuana. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were informed that the least favorable characterization of service you may receive is under Other Than Honorable (OTH) conditions. You elected your right to consult with counsel and to submit a statement. You waived your right to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy. The CO stated in pertinent part:

[Petitioner] has totally ignored this command and the Navy's policy on Zero Tolerance. This type of conduct greatly undermines the discipline and morale of the USN. It is apparent that [Petitioner] does not wish to conform to the rules and regulations of the Naval service. It is strongly recommended that he be discharged from the Navy and that the characterization of his service be under Other Than Honorable conditions.

The separation authority directed your administrative discharge with an OTH character of service and you were so discharged on 22 July 1993.

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 so that you may receive veterans' benefits and your contentions that: (1) you are limited in the types of employment you can pursue due to your current discharge character of service, (2) your one mistake should not be a reflection of your military service, (3) you were in a low place in your life because of your advancement issue, daily pain from your injury in which you were not allowed to medicate due to your allergic reaction to medication, the medical procedure presented to you, and a change in your relationship, (4) you were desperate to get out; your doctor, chain of command, and your spouse were all against you, (5) you were offered to smoke marijuana and saw this as a way out, and (6) you made a horrible decision under extreme conditions out of desperation. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

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 NJP, 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. Additionally, 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 considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Moreover, 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. Furthermore, 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. 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. 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 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,

6/16/2025

