



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

Docket No. 1336-25
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 3 March 1982. On 8 February 1985, you received non-judicial punishment (NJP) for wrongful use of marijuana. Additionally, you were issued an administrative remarks (Page 13) retention warning counseling concerning deficiencies in your performance and conduct as evidenced by your wrongful use of marijuana. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 27 September 1985, you received your second 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 (ADB). In your statement you stated in pertinent part:

I feel the charges brought against me at Captain's Mast were untrue and unjust. I also think there is nothing wrong with smoking marijuana on my own time as long as it does not bother anyone else around me. I am not satisfied with my job in the Navy. I feel no sense of accomplishment in my current job. I feel I could do much better in the role of a civilian. I could smoke marijuana anytime and not worry about the Navy punishing me for it.....I want to enjoy life, and I can't do it while in the Navy. I want to be a civilian, so that I can be myself.

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 no potential for further service. He is a below average worker in his rating and displays a negative attitude which adversely affects the morale of his shipmates. He has been counseled repeatedly by all echelons of the chain of command to conform his behavior to Navy standards. [Petitioner] is not supportive of Navy Regulations, and his attitude suggests future conduct problems. Administrative discharge with an OTH character of service.....After reinstatement to GSM3, SNM's attitude again worsened as evidenced by his most recent NJP. Recommend immediate separation from the naval service with discharge under other than honorable (OTH) conditions. [Petitioner] feels as though he is exempt from the Navy's "No Drug" Policy. He cannot be recommended for retention following this second incident of drug abuse. He is an incorrigible drug user with zero potential for productive naval service.

The separation authority approved the recommendation and you were so discharged on 20 November 1985.

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 are allowed to obtain veterans' benefits and your contentions that: (1) your discharge character of service was viewed as unacceptable at the time of your discharge; however, it is no longer viewed in that perspective, (2) marijuana has been "decriminalized" and "legalized" in several states and United States territories, and (3) your second urinalysis was clean, someone tampered with your sample or made a big mistake for your results to return positive for marijuana. 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple 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. 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. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board observed that you did not provide any evidence, other than your statement, to substantiate your contentions that someone tampered with your urine sample. Regardless, the Board noted your admission of constant drug abuse while on active duty and found this evidence was sufficient to support the basis for your separation. 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

■

Executive Director

Signed by: ■