



**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. 1649-25  
Ref: Signature Date

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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 you did not file your application in a timely manner, the Board waived the statute of limitation in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 23 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 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 reenlisted in the Navy, following an initial entry-level discharge from the Delayed Entry Program (DEP) for moral disqualification due to drug use, and you began a period of active duty on 26 February 2001. In January 2002, a message from the Naval Drug Laboratory reported your drug screening urinalysis positive for marijuana use. On 1 February 2002, you were subject to nonjudicial punishment (NJP) for a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to wrongful use of the controlled substance, marijuana. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and you elected to waive your right to a hearing before an administrative discharge board. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved and you were so discharged on 2 April 2002.

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 your contentions that your unfavorable discharge characterization resulted from a single mistake. Specifically, you describe that you incurred several injuries during your military service which caused you pain and interfered with your duties; both of which contributed to depression. You also indicate that you had been considered for a medical discharge at one point. Subsequently, the terrorist attacks of 11 September 2001 occurred while you were deployed; which caused you to have a mental breakdown due to your emotions over being injured to the point of having difficulty moving about the ship and due to knowing that war was imminent. You attribute your marijuana use to a naïve attempt at self-medication and submit that the Department of Veterans Affairs (VA) has issued favorable decisions regarding your disability claims and character of discharge. You thought that the VA's determination to upgrade your character of discharge would "overturn" your OTH characterization from the military.

The Board noted that you indicated having attached documentary evidence in support of your claim; however, these documents were not included with your application despite the Board's follow-up request for submission of additional records. Likewise, to the extent that you contend having been considered for a medical disability discharge, the Board found no evidence of record in support of this claim, which the Board noted appears, from your contentions, to have been related to in-service physical injuries as opposed to mental health concerns. You also checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of the personal statement you included with your DD Form 149 without any other additional documentation.

After thorough review, the Board concluded the 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 included 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 you should have been particularly aware of concerns regarding in-service drug use, given your initial discharge from the DEP and your subsequent enlistment waiver process due to your previous abuse of marijuana.

To the extent that you believed the VA's character of discharge determination would "overturn" your military discharge, this belief was incorrect. The Board notes that it is not bound by the VA's administrative determinations, which are issued by the VA for its own purposes with respect to veteran benefits, independent of the purposes for which the military departments characterize your service incident to your discharge.

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.

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,

6/17/2025

