



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

Docket No. 3075-25
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 29 July 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 with a preservice citation for marijuana possession and began a period of active duty on 13 February 1989. On 21 September 1989, you received non-judicial punishment (NJP) for unauthorized absence (UA). Additionally, you were issued an administrative remarks (Page 13) retention warning counseling concerning deficiencies in your performance and conduct as evident by your violation of Article 86, Uniform Code of Military Justice. On 7 February 1991, you received your second NJP for a period of UA totaling 14 days and wrongfully appropriated property of the U.S. Government of a value of about \$3.00. On 14 June 1991, the Navy Drug Laboratory reported that your urine sample tested positive for THC (marijuana). On 9 July 1991, you received your third 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 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. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] has violated the CNO's policy and my policy of zero tolerance by using marijuana. His disregard for Navy-wide policy poses a threat to squadron discipline. [Petitioner] allowed his personal problems to interfere with his professional responsibilities displaying a detrimental lack of judgement. [Petitioner] was not given a page 13 counseling entry from this command for his pattern of misconduct. Therefore, he was not processed for pattern of misconduct as evidenced by his three NJPs. His violations of the UCMJ, Articles 86 and 121 did not rate a punitive discharge. I recommend that [Petitioner] be separated from the naval service for misconduct due to drug abuse and that the characterization of that discharge be Other Than Honorable.

The separation authority approved the recommendation, and you were so discharged on 5 September 1991.

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 and contentions that: (1) you were a good Sailor and received very good evaluations, (2) you were having marital problems and your spouse left with your child, (3) you were upset and went out for drinks, and (4) you were offered to smoke a joint and this was your first and only time smoking while in the Navy. You also checked the "Other Mental Health" box on your application but did not respond to the Board's request for evidence in support of this claim. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of your DD Form 149 and your statement.

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 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH 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. Thus, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions.

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 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,

8/6/2025

