



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

■  
Docket No: 7505-21  
5086-20  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 15 December 2021. 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 1 August 1996. On 20 December 1998, you were arrested by civilian authorities for possession with the intent to sell, give, or distribute more than one-half ounce, but less than five pounds of marijuana, and possession with intent to sell, give or distribute, cocaine. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding the absence of those documents, the record does show that on 13 January 1999, your commanding officer (CO) recommended to the separation authority (SA) that you be

administrative discharged from the Navy with an other than honorable (OTH) characterization of service by reason of misconduct due to drug abuse. The SA approved the CO's recommendation and directed your OTH discharge by reason of misconduct due to drug abuse. On 3 February 1999, you were so discharged.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy with an OTH characterization of service, your narrative reason for separation is "Misconduct," your separation code is "HKK (Administrative Board Waived)," the separation authority is "MILPERSMAN 1910-146," and your reenlistment code is "RE-4."

In reviewing your separation and characterization of service, the Board considered the totality of the circumstances to determine whether relief is appropriate today in the interests of justice in accordance with guidance provided by the Wilkie Memo. Accordingly, the Board carefully considered all potentially mitigating factors, such as your desire to upgrade your discharge character of service and submission of supporting documentation. The Board also considered your contentions that: (1) you were given an OTH discharge because your discharge was perceived as if you were convicted; and (2) you were exonerated and cleared of all charges before your discharge; you were at the wrong place and it was proven.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian arrest involving the wrongful possession of a controlled substance, outweighed these mitigating factors. Additionally, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service. The Board determined that your administrative discharge was in accordance with naval regulations. 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,

1/11/2022

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Executive Director

Signed by: █