



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: 2384-22

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 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 11 April 2022. 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, 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 and began a period of active duty on 21 June 1985. On 24 August 1988, you tested positive for use of a controlled substance-marijuana, at which point, you voluntarily self-referred to DAPA for marijuana abuse counseling. On 30 August 1988, you began a period of unauthorized absence (UA) which lasted five minutes. On 7 September 1988, you began a second period of UA which lasted 15 minutes. On 18 November 1988, you were referred to a civilian health care provider as a result of a sinus infection. On 9 December 1988, you were diagnosed with bilateral maxillary sinus. On 5 January 1989, a medical provider reported the use of a topical application of 4% cocaine solution during your surgical procedures. From a period beginning on 19 January 1989 until 8 March 1989, you tested positive for use of a controlled substance-cocaine in three occasions. On 3 April 1989, you received nonjudicial punishment (NJP) for two instances of wrongful use of a controlled substance-cocaine. On 4 April 1989, a medical officer diagnosed you as a drug experimental user and recommended that you were administratively separated from the Navy. On the same date, you were notified of the initiation

of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you elected to waive all your procedural rights. On 4 April 1989, you began a third period of UA. On 6 April 1989, your commanding officer recommended an other than honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 22 April 1989, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to drug abuse. On 5 May 1989, you were discharged.

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 contention that your Certificate of Release or Discharge from Active Duty (DD Form 214) should reflect an honorable discharge characterization of service vice OTH and that you tested positive to use of cocaine as a result of a medical procedure. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your NJP and UAs, outweighed these mitigating factors. In making this finding, the Board considered the fact you tested positive for marijuana use prior to your operation and did not provide medical evidence that supports your theory that your three positive cocaine urinalyses, between 19 January 1989 - 8 March 1989, were the result of a topical application of a 4% cocaine solution from January 1989. 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 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,

5/1/2022

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Executive Director

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