



**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: 2756-22

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 initial 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 reconsideration application on 18 May 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, 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 and commenced active duty on 1 November 1978. Your pre-enlistment application and paperwork indicated that, on 4 April 1978, you received "Page 13" administrative entries (Page 13) identifying you as a drug abuser, and that you acknowledged that you have been counseled and warned that further misconduct on your part with drug users or possession may result not only in disciplinary action but also in processing for administrative discharge. Additionally, on 9 November 1978, you were issued another Page 13 where you acknowledged that you have been counseled and warned that further misconduct on your part with drug users or possession may result not only in disciplinary action but also in processing for administrative discharge which could lead to a punitive discharge or discharge under Other Than Honorable conditions (OTH).

On 4 April 1979, you received non-judicial punishment (NJP) for marijuana possession, disobeying a lawful order for possessing a deadly weapon, and theft of government property. You did not appeal your NJP. On 9 November 1979, you received NJP for failing to obey a lawful order for the possession of marijuana, cocaine, and phencyclidine (aka "angel dust" or PCP). You did not appeal your second NJP.

On 1 May 1980, you received NJP for unauthorized absence lasting forty-one days, missing ship's movement, and breaking restriction. You did not appeal your third NJP. Following your NJP you were issued a Page 13 where you acknowledged you have been warned concerning your frequent involvement of a discreditable nature with military authorities.

On 27 May 1980, you were notified of administrative separation proceedings by reason of frequent involvement of a discreditable nature with military authorities. You consulted with counsel and waived your right to an administrative separation board. Ultimately, on 16 July 1980, you were discharged from the Navy for substandard personal behavior reflecting discredit upon the service or adversely affecting your performance of duties with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

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: (a) all of your NJP violations were directly or indirectly the result of serious drug addiction, and (b) your NJP violations were also due to the fact that you were never offered drug treatment or counseling and thus rehabilitation while in the service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH or GEN conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, the Board noted that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 2.80. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct and unreliability which further justified your GEN characterization of discharge. The Board also noted that there

is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. As a result, 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 upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, 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,

6/10/2022

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Executive Director

Signed by █