



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: 2978-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 June 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo) and 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 service on 21 September 1981 and voluntarily extended your enlistment for 48 months on 20 September 1985. Prior to extending your contract, you were subject to nonjudicial punishment (NJP) on 5 February 1985 for a violation of Article 86 due to an unauthorized absence. On 12 March 1986, you received a second NJP for violation of Article 92 resulting from dereliction of duty. After your third NJP, on 1 April 1987, for violation of Article 112a due to wrongful use of cocaine, you were notified of administrative separation by reason of misconduct due to drug abuse and requested a hearing before an administrative separation board, at which you were represented by qualified legal counsel. During the hearing, you made an unsworn statement insisting that you had never done drugs and did not know how your urinalysis results were positive; however, the separation board unanimously found that the preponderance of evidence substantiated misconduct by reason of

drug abuse and recommended discharge under Other Than Honorable (OTH) conditions. You submitted a rebuttal to the proceedings, reiterating that you had never used drugs and alleging that the members had discriminated against you by not thoroughly checking all of the facts. Your commanding officer's endorsement of the proceedings strongly recommended that you receive a General (Under Honorable Conditions) discharge; however, you received a fourth NJP, on 28 May 1987, for Article 89, disrespect toward a commissioned officer, two specifications of Article 92 orders violations, and an unspecified violation of Article 134. Subsequently, your separation was approved for an OTH characterization and, on 12 June 1987, 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 desire to upgrade your discharge and your contentions that your discharge for drug use was erroneous and unjust because you never used drugs other than those prescribed to you by medical, that you had statements in your favor and asked to be tested against, but your request was denied. The Board also considered your contentions that you have maintained a clean criminal record and have never been arrested or charged with any drug related offense, that you served honorably, and that you continue to live as an honorable citizen. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these 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 that included a drug offense. The Board reviewed the summary of your administrative separation board proceedings and observed no evidence of error or irregularity. Notwithstanding your contended denial of drug use, the Board found it persuasive that you chose to accept nonjudicial punishment for that alleged offense rather than demand trial by court-martial and that your administrative separation board unanimously found sufficient evidence to substantiate wrongful drug use. Additionally, although your contentions are specific to your drug-related misconduct, the Board noted that you received three additional NJPs for six additional misconduct violations, at least four of which constitute serious offenses under the Uniform Code of Military Justice. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, 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, 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, _____

7/6/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]