



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: 3714-22
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 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 15 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 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.

After two periods of honorable service, you reenlisted in the Navy on 1 August 1985. On 2 December 1985, you received non-judicial punishment (NJP) for two specifications of failing to perform your duty and two specifications of leaving watch without relief. On 31 August 1988, you tested positive for marijuana and cocaine. On 10 October 1988, you received an evaluation from the Counseling and Assistance Center (CAAC). The CAAC determined you were not drug dependent, recommended you attend the command's Drug and Alcohol Abuse Program (DAPA), and be placed on a six month urinalysis surveillance program. On 13 October 1988, you received an additional NJP for wrongful use of marijuana and cocaine.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse, with an Other Than Honorable (OTH) characterization of service. In January 1989, you received an evaluation from the command's medical officer who determined you were not drug dependent. The medical officer also noted that you tested positive for marijuana and cocaine, on 31 August and 17 November 1988, after receiving a CAAC evaluation and denying using illegal drugs. The SA approved the CO's recommendation on 19 February 1989. On 3 March 1989, you were discharged.

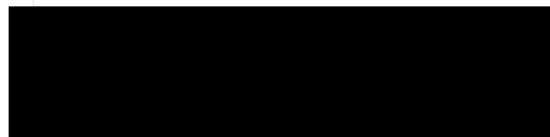
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge in addition to your contentions that you have dedicated your life to serving others, gave back to the community by helping others, and remained drug free. The Board also considered the background information you provided regarding the circumstances that led to your drug abuse. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and an advocacy letter.

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 fact your misconduct included a drug offense and showed a complete disregard for military authority and regulations. Further, the Board noted while commendable, your post service good conduct does not excuse your conduct while in the Navy or the basis for your discharge. Ultimately, the Board felt your drug abuse was too serious to be offset with the mitigation evidence you provided. 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. 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 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,

6/30/2022



Executive Director

