



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

■  
Docket No: 3935-22  
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 1 August 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.

During your enlistment processing you disclosed a history of infractions to include petty theft, speeding, parking violations as well as the use of marijuana. Despite your admission, you were allowed to proceed with your enlistment processing. You enlisted in the U.S. Navy and commenced a period of active duty on 30 June 1977. On 3 February 1978, you received your first nonjudicial punishment (NJP) for the possession of marijuana. From the period of 15 February 1978 through 14 July 1978, you received three additional NJPs for infractions including unauthorized absence (UA) and violating a general order or regulation by possessing marijuana.

On 20 July 1978, you were notified of your pending administrative separation due to your frequent involvement of a discreditable nature with military authorities, at which time you elected your right to consult with counsel but waived your right to have your case heard before an administrative discharge board (ADB). Additionally, you signed an agreement to waive your ADB in order to receive a General (Under Honorable Conditions) (GEN) characterization of service.

However, as a result of your continued misconduct, on 25 July 1978, you were again notified of your pending administrative separation by reason of misconduct due to your frequent involvement of a discreditable nature with military authorities, at which time you elected your right to consult with counsel and waived your right to have your case heard before an ADB. Subsequently, you were assigned to the counseling and assistance center (CAAC) at █ but disenrolled due to non-participation.

From 4 August 1978 through 3 October 1978, you received five additional NJPs for infractions including UA, breaking restriction, and possessing and using marijuana. This led to a final notification of your pending administration separation, on 7 November 1978, due to frequent involvement of a discreditable nature with military authorities and drug abuse, at which time you elected your right to submit a statement on your own behalf. In your statement, you request a GEN discharge as a result of your inability to adjust to Navy life. In November 1978, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct and, on 14 December 1978, you were so 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 contentions that; (1) you are unsure why you were discharged as the military ship you were serving on was inactive, and (2) you are a heart patient who suffered a stroke in 2018 and would like an upgrade to your discharge to obtain benefits for the sake of your health. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

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 multiple NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board took into consideration that your misconduct included multiple drug offenses. Additionally, the Board considered the fact characterization of service is based in part on conduct marks assigned on a periodic basis. Your overall trait average was 2.5 and your military behavior average was 1.8. At the time of your service, an overall trait average of 2.7 with a military behavior average of 3.0 was required for a full honorable characterization of service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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. While the Board commends your post-discharge good character and empathizes with your medical condition, 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 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,

8/17/2022

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Executive Director

Signed by: █