



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



Docket No: 4579-22
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 4 November 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 U.S. Navy and began a period of active duty from 21 September 1971 to 10 October 1975 when you were discharge with an Honorable characterization of service. On 2 May 1980 you began a period of active duty and subsequently completed this enlistment with an Honorable characterization of service on 29 April 1982. Upon reenlisting, you commenced your third period of active duty. On 12 September 1991, you were found guilty at Special Court-Martial for wrongful use of your position or rank to secure loans from subordinates and intent to unlawfully obtain a loan in the sum of \$300.00. Following your conviction, an evaluation was submitted by the Commanding Officer (CO) not recommending you for advancement. On 29 May 1992, you received non-judicial punishment (NJP) for wrongful use of cocaine. Subsequently you were notified for administrative separation for misconduct, drug abuse. You elected your rights to consult with military counsel and to request an administrative board hearing. The administrative board recommended you be discharge with an Other than Honorable

(OTH) characterization of service. Your CO submitted his recommended to the Separation Authority (SA) concurring with the board's recommendation that you be discharged with an OTH. On 7 October 1992, the SA directed your discharge with an OTH. Subsequently, you were discharged on 16 October 1992 with an OTH for drug abuse.

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 for a discharge upgrade and contentions that you were having extensive family problems and that contributed to your misconduct. You contend that your wife began using cocaine to cope with your deployments and became addicted, you sought assistance but your wife did not want to be helped, and you were having financial difficulties. You further assert that you asked a junior Sailor to borrow \$20 and the Sailor turned you in and you did cocaine to keep your wife from going out and this became a problem for you as you became addicted. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and a personal statement.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board considered the mitigation evidence you submitted, including your reasons for committing misconduct, but concluded the evidence you submitted was insufficient to outweigh your misconduct based on the seriousness of your misconduct. The Board was not persuaded by your reasoning for using drugs and was unconvinced that your wrongful drug use was solely to prevent your spouse from going out to use drugs. Regardless, even if that was your purpose for using cocaine on multiple occasions, the Board determined it exhibited extremely poor judgement and did not excuse your conduct. 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, 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 an upgraded characterization of service as a matter of clemency or equity. 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,

11/28/2022



Executive Director

Signed by:

