



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

█  
Docket No: 5902-22  
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 31 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).

You entered active duty with the Navy on 14 January 1987. During the period from 3 June 1987 to 11 January 1988, you received three non-judicial punishment (NJP) for unauthorized absence (UA) totaling 17 days, four specifications of absence from appointed place of duty, and making a false official statement. On 9 March 1988, a summary court-martial (SCM) convicted you of seven days of UA, wrongful use of marijuana, wrongful use of phencyclidine, and breaking restriction. Subsequently, you were notified of pending administrative separation action by reason of a pattern of misconduct/commission of a serious offence/drug abuse. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct/commission of a serious offence/drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 31 May 1988, 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 you were the victim of physical harassment and discharged due to a hazing incident. The Board also took into consideration your desire for veterans' benefits. 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 three NJPs and SCM, 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. In addition, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. 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. 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. 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 of service. 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 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,

9/9/2022

