



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: 6167-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 28 October 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 Navy and entered active duty on 2 July 1986. Your enlistment physical, on 18 June 1985, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. As part of your enlistment application, you disclosed pre-service marijuana use on diverse occasions. On 2 July 1986, you signed and acknowledged the Navy "Drug and Alcohol Abuse Statement of Understanding." On 8 July 1986, while at initial recruit training you acknowledged being briefed on the Navy Policy on Drug and Alcohol Abuse, the legal consequences of illicit drug use, and the Navy urinalysis program.

On 14 March 1989, you were convicted at a General Court-Martial (GCM) of the wrongful distribution of cocaine on board the █ while at sea. You were sentenced to confinement for eighteen (18) months, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Dishonorable Discharge (DD). On 26 April 1989, the

Convening Authority (CA) approved the sentence as adjudged, except approved only a Bad Conduct Discharge (BCD) in lieu of a DD, and partially suspended the automatic forfeitures of pay. Upon the completion of GCM appellate review in your case, on 28 February 1990, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 16 July 2018, this Board denied your initial application for relief. You had argued, in part, that you were an 18-year old kid who made a foolish decision, and that you were now 49 years old and should not have to pay for your mistakes as a child for the rest of your life.

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: (a) you were told at the time by a JAG at the time that your discharge was eligible for upgrade within a year of being released but you thought it was automatic and were not aware you had to apply for an OTH, (b) you pled guilty to distribution of less than one gram of cocaine, (c) you had a small drug habit at the time, were eighteen years old and made a bad decision and it cost you your career, and (d) post-service you have been a model citizen and role model in your community where you mentor as a big brother. 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. While not impacting the Board's ultimate decision, the Board noted that at the time of your drug distribution in November 1988 you were twenty years old and not eighteen as you contend. The Board unequivocally did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board also determined that your serious misconduct constituted on board a naval vessel a significant departure from the conduct expected of a Sailor, and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board 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. Lastly, 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. By your own admission you disclosed that you had a drug habit at the time you possessed and distributed cocaine on board the ██████████. The Board determined that illegal drug use and distribution 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. In the end, the Board concluded that you received the correct discharge characterization based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. In making this finding, the Board noted you already received a large measure of clemency when the convening authority mitigated your dishonorable discharge to a BCD. Ultimately, the Board determined you were properly convicted at a GCM of serious drug-related misconduct and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. 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 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,

11/1/2022

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Executive Director

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