



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

█  
Docket No: 7024-22  
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 14 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).

On 25 September 2000, commenced a period of active duty after enlisting in the U.S. Navy. On 8 February 2001, you received your first nonjudicial punishment (NJP) for failure to obey order or regulation by consuming alcoholic beverages while underage. You were subsequently issued an administrative counseling documenting your deficiency and retaining you in the naval service yet advising you that any further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation. On 2 October 2001, you received a second NJP for failure to obey order or regulation, disorderly conduct/drunkenness, and two specifications of the wrongful use, possession, etc., of a controlled substance (amphetamine/methamphetamine). On 1 October 2001, you were notified of your pending administrative separation by reason of misconduct as evidenced by your drug abuse, at which time you waived your right to consult with military counsel and to have your case heard before an administrative discharge board. On 8 November 2001, you were discharged with an Other Than Honorable (OTH) characterization of service by reason of Misconduct [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 to upgrade your discharge, change your reentry code, and have your rank reinstated. You contend that: (1) you were falsely accused of raping a female you had consensual sex with, (2) as a result, you turned to drugs to alleviate your pain of being falsely accused, (3) the female eventually admitted that her allegations were false but you were already broken and damaged as a result of how you were treated by members of your unit and chain of command (COC), (4) your COC refused to help you and did not offer you mental health treatment, and (5) you have not been treated for your PTSD and probably never will because the VA (Department of Veterans Affairs) “don’t care, all they see is an OTH and this needs to be fixed by the Navy.” For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that it included two separate drug offenses. 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. Furthermore, the Board noted you provided no evidence to substantiate 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. 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. 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, changing your narrative reason for separation, changing your reentry code, or granting relief 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,  
 12/5/2022

