




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


Docket No: 8086-22
Ref: Signature date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 7 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 16 December 1992. On 14 July 1993, you received nonjudicial punishment (NJP) for willful disobedience of a senior noncommissioned officer. On 6 July 1995, you tested positive for use of a controlled substance-cocaine. On 19 July 1995, you received a second NJP for use of a controlled substance-cocaine. As a result, on 20 November 1995, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you elected to waive your procedural rights. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug

abuse. On 6 December 1995, your administrative separation proceedings were determined to be sufficient in law and fact. On 8 December 1995, the separation authority approved the recommendation and directed your discharge. On 13 December 1995, you were discharged with an OTH.

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 forcefully told to sign documents related to your misconduct and administrative separation processing, and that the senior enlisted person was unable to answer your discharge related questions. For purposes of clemency and equity consideration, the Board noted you provided letters of recommendation from your former chain of command.

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 NJPs, 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 service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board considered the likely negative impact your misconduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contention that you were forced to sign processing document and determined your urinalysis results support your administrative separation processing for drug abuse. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine 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 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 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,

12/16/2022

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Executive Director

Signed by: █