



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

█  
Docket No. 8341-22  
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 reconsideration application on 14 April 2023. 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 entered active duty on 5 September 1986. Your pre-enlistment physical examination, on 30 July 1985, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 1 October 1985, you acknowledged and signed the "Drug and Alcohol Abuse Statement of Understanding." On 10 September 1986, at Recruit Training Command, you acknowledged being briefed on the: (a) Navy policy on drug and alcohol abuse, (b) legal consequences of illicit drug use, (c) effects of drug and alcohol abuse on discipline and combat readiness, (d) consequences of drug trafficking, (e) physical and psychological effects of drug and alcohol abuse, and (f) the Navy's urinalysis screening program. You also acknowledged reading the "Drug and Alcohol Abuse Statement of Understanding," and certified you understood all the information contained therein.

On 9 January 1987, you reported for duty on board the ██████████ in ██████████. On 18 November 1987, your command issued you a "Page 13" retention warning (Page 13) documenting your insubordinate conduct towards a petty officer. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 9 June 1988, you received non-judicial punishment (NJP) for unauthorized absence (UA), missing movement while in a UA status, and insubordinate conduct. You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting your misconduct and advising you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 12 April 1990, you received NJP for the wrongful use of a controlled substance (marijuana). You received the maximum punishment permitted at NJP. You did not appeal your NJP.

On 16 April 1990, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, and misconduct due to the commission of a serious offense. You expressly waived in writing your rights to consult with counsel, submit a written statement, and to request an administrative separation board. In the interim, on 20 April 1990, you were screened for drug dependency and determined not to be drug dependent. On 8 May 1990, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 9 May 1990, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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 change to your narrative reason for separation, along with your contentions that: (a) the Navy failed to provide you with the necessary tools and support needed to address your problems, (b) there was no evidence you received appropriate supportive counseling, (c) the Navy's failure to provide you with an adequate and meaningful chance to rehabilitate was an injustice, (d) had you received the appropriate treatment you would have been afforded the opportunity to continue to serve your country honorably and grow into a successful and valuable service member, (e) once you demonstrated difficulty integrating into military life as demonstrated by your NJPs the Navy should have supplied the support needed to continue your career and your service, but the Navy separated you without any means to access the treatment you badly needed.

For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge 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 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated 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 was not persuaded by your suggestion that the Navy is to blame for your personal and professional shortcomings and failure to conform to basic military standards of good order and discipline. The Board noted you were issued two separate Page 13 retention warnings documenting certain deficiencies, and you were provided you with ample opportunity to correct your behavior and performance over time. Therefore, the Board determined you were responsible for your active duty misconduct, and any argument about the perceived lack of support and counseling was without merit.

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. Additionally, 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 determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

4/20/2023

