



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

█  
Docket No. 9403-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 February 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 Navy and began a period of active duty on 22 March 1984. You were administratively counseled, on 22 August 1984, for poor military appearance and subject to nonjudicial punishment (NJP) two days later for a violation of the Uniform Code of Military Justice (UCMJ) under Article 86 due to unauthorized absence (UA) from your service school. Although you served most of the next 2 years without incident, you received a second NJP, on 1 April 1986, for another violation of Article 86, UA, in addition to a violation of Article 87 for missing your unit's scheduled movement.

You again served most of the next 2 years without incident until you were counseled, on 4 February 1988, for another UA. Shortly thereafter, on 7 April 1988, you were convicted by Special Court-Martial (SPCM) for two specifications of violating Article 112a of the UCMJ for wrongful use of cocaine and marijuana. Your sentence included reduction to E-1, 6 months confinement, forfeitures of pay, and a Bad Conduct Discharge (BCD). Your punitive discharge was subject to appellate review of the findings and sentence of your trial and, on 25 June 1990, you were discharged with a BCD.

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 your contentions that clemency factors should be considered in favor of your request. Specifically, you state that youth and immaturity contributed to your misconduct, that your punitive discharge for failing a single drug test was unduly harsh, and that your punishment is also disproportionate to comparable cases for “hundreds” of service members with whom you have since discussed your situation and assert that you have discovered none of them received as harsh a punishment as you. 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 that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted that you did not submit any evidence either in support of your specific contentions or in support of clemency on the basis of post-discharge character. With respect to your contention of disparate punishment, the Board noted that you were counseled twice for poor performance and conduct and also subject to NJP twice for misconduct prior to your SPCM. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member 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 granting you the relief you requested 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 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 is attached 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,

2/28/2023

