



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

█  
Docket No. 326-23

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 27 January 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 20 April 1993. Your pre-enlistment physical examination, on 11 March 1993, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 30 April 1993, your command issued you a "Page 13" counseling warning (Page 13) documenting your retention on active duty in spite of your fraudulent enlistment for failing to disclose your entire pre-service arrest and drug abuse history. On 7 August 1993, you reported for duty on board the █ (█) in █, █.

On 7 February 1996, you received non-judicial punishment (NJP) for communicating a threat. A

portion of your punishment was suspended. You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting your misconduct. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and could result in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 6 March 1996, the suspended portion of your February 1996 NJP was vacated and enforced due to continuing misconduct. That same day, you received NJP for failing to obey an order or regulation, and provoking speeches or gestures. You did not appeal your NJP.

On 14 August 1996, you received NJP for failing to obey a lawful order. A portion of your punishment was suspended. You did not appeal your NJP. On 25 September 1996, the suspended portion of your August 1996 NJP was vacated and enforced due to continuing misconduct. That same day, you received NJP for the wrongful use of a controlled substance, dereliction in the performance of duties, and provoking speeches or gestures. You did not appeal your NJP.

Following your last NJP, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your right to request an administrative separation board. Ultimately, on 21 October 1996, you were separated from the Navy for misconduct with an under Other Than Honorable (OTH) conditions 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 "Secretarial Authority" discharge along with your contentions that: (a) you felt like you needed to escape the military and return home so you decided to take drugs and turn yourself in to your chain of command, (b) your chain of command made a material error in discretion by ignoring your initial request to transfer ships, (c) your chain of command should have granted your request to transfer ships or look into what was causing you to misbehave, (d) instead of investigating what was happening, your chain of command left you alone to suffer the harassment and left you to feel like you had no other alternative, (e) you realized it was wrong to do drugs in order to get out of the Navy, but you felt like you had no other choice and was tired of getting in trouble and facing the harassment from your chain of command, (f) you continue to suffer a material injustice based on your unduly harsh discharge status and your outstanding post-service conduct warrants a record correction, (g) you have worked consistently since your discharge in order to provide for your family by being a devoted father and husband, and by teaching your children not to make the same mistake you did before you were discharged, and (h) you work as a truck driver where you are randomly drug tested and throughout your whole career you have never failed a drug test. 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. Additionally, 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. 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 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 pattern of serious misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. While the Board commends your post-discharge accomplishments and good character, 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,

2/2/2023

