



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

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Docket No. 1012-23  
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 application on 24 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 U.S. Navy and entered active duty on 24 May 1984. Your pre-enlistment physical examination, on 3 April 1984, and self-reported medical history both noted no neurologic or psychiatric issues. As part of your enlistment application, on 9 April 1984, you signed and acknowledged the "Drug Alcohol Abuse Statement of Understanding." While at recruit training, on 5 August 1984, you acknowledged in writing being briefed on: (a) Navy policy of 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.

On 12 June 1986, you were convicted at a General Court-Martial (GCM) of: (a) six separate specifications of the wrongful use of a controlled substance, (b) two separate specifications of

wrongfully using a controlled substance on board ship, (c) two separate specifications of the wrongful possession of a controlled substance, and (d) the wrongful possession of a controlled substance on board ship. You were sentenced to confinement for three (3) years, total forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 14 August 1986, the Convening Authority approved the GCM sentence as adjudged. In the interim, your separation physical examination, on 22 July 1988, and self-reported medical history both noted no neurologic or psychiatric issues. Upon the completion of GCM appellate review in your case, on 5 August 1988, you were discharged from the Navy with a BCD 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 contentions that: (a) the severity of your BCD was not warranted, (b) you were charged with and convicted based on hearsay evidence and not any direct evidence such as a urinalysis, (c) today marijuana use is not considered to be a serious offense, (d) no evidence other than hearsay evidence was used to convict you, (e) you have waited all these years to seek an upgrade because you were not sure how to start the process and you were ashamed, embarrassed, and emotionally and mentally stressed about discussing your discharge with others. 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. The Board did not believe that your record was otherwise so meritorious to deserve an 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 also determined that your drug-related misconduct constituted a significant departure from the conduct expected of a Sailor, and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted 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.

Additionally, the Board determined the type of evidence used to convict you at your GCM was not a persuasive argument. The Board noted that evidence is presented at trial in many forms, and the Board concluded that in order to convict you at your GCM the evidence had to prove beyond a reasonable doubt that you were guilty of all eleven (11) drug-related specifications. Whether the evidence was direct, indirect, circumstantial, or based on "hearsay" as you contend, the Board noted it met the necessary standard of proof for a finding of guilty. The Board further noted that on appellate review your GCM conviction and sentence was upheld. The Board determined that had there been any substantive, procedural, or evidentiary defects with your GCM conviction and sentence, the appellate court would have ordered the appropriate relief.

Absent a material error or injustice, the Board declined to summarily upgrade a punitive discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or

employment opportunities. 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. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious drug-related misconduct. The Board determined that illegal drug use and distribution 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 also 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. While the Board carefully considered the evidence you submitted in support of your application, 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 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,

3/5/2023

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Executive Director

Signed by: █