



**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. 1134-23  
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 13 March 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).

Prior to your enlistment into the Navy, on 11 May 2004, you signed a statement of understanding which directed you to undergo drug test within 72 hours after reporting to recruiting training command, with acknowledgment that a positive result will result in process for discharge.

You enlisted in the Navy and began a period of active service on 24 June 2004. On the same day, you submitted a urine sample, which tested positive for marijuana use. On 7 July 2004, 13 days following your entry onto active duty, entry-level administrative separation proceedings were initiated as a result of your defective enlistment and induction due to erroneous enlistment as a result of drug abuse. On the same day, you waived your right to consult with counsel. The separation authority approved and directed your separation with an uncharacterized character of service by reason of erroneous entry due to drug abuse, with a separation code of JFU, and a RE-4 reentry code. On 23 July 2004, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) to change your characterization of service and narrative reason for separation. The NDRB denied your request, on 20 March 2014, after determining your discharge was proper as issued.

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 change your separation and reentry codes along with your contentions that the assigned codes prevent you from applying to federal programs, you tested negative for drug use prior to your entry onto active duty, and your second test after reporting to active duty was erroneous. For purposes of clemency and equity consideration, the Board noted you did not provide 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 erroneous entry, as evidenced by the positive urinalysis, outweighed these mitigating factors. In making this finding, the Board noted that you provided no evidence to substantiate your contention the positive urinalysis was erroneous. 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. Finally, the Board noted that you were warned of the consequences of any drug abuse. As a result, the Board determined you were assigned the appropriate separation code and reentry code based on applicable regulation and your unsuitability for further military service. 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,

4/4/2023

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Executive Director  
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