



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

█
Docket No. 1642-23
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 15 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).

You enlisted in the U.S. Navy and began a period of active duty on 27 March 85. Upon completion of your obligated service you immediately reenlisted into the Naval Reserve, on 27 June 1989, and commenced a second period of duty in the Navy. After completion of that period of service, you immediately reenlisted in the Naval Reserve on 28 February 1993.

On 13 December 1996, results of your urinalysis came back positive for cocaine. Subsequently, your Commanding Officer (CO) began the process of administrative separation that included sending you the notice of administrative processing, via certified mail return receipt, to your last known address. As part of the process, the command legal clerk made a sworn affidavit that he mailed the notification to you. After you failed to respond, the CO forwarded the documents to the Separation Authority (SA). After reviewing all the separation documents, on 26 June 1997,

the SA directed that you be discharged with an Other Than Honorable (OTH)¹ characterization of service for drug abuse.

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 an upgrade in your characterization of service and your contention that the discharge procedures was not followed due to the lack of a signed Statement of Awareness in your separation package. 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 positive urinalysis for cocaine, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Additionally, the Board also 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. Finally, the Board was not persuaded by your arguments of error since the record shows that a notification was sent to your last known address via certified mail, return receipt. The Board concluded this was in accordance with applicable service regulations for cases where a service member is unavailable for personal notification; as it was in your case. 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 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

¹ While your record contains administrative remarks, dated 25 April 1997, that state you were discharged with a General (Under Honorable Conditions) characterization of service, the Board concluded this was inadvertently inserted into your record prior to the SA determination and is erroneous.

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,

3/25/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]