



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

█  
Docket No. 2292-23

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 September 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 3 December 1982. Upon your enlistment, you were granted a moral waiver for experimental use of marijuana and arrest for liquor violation. On 7 January 1983, you submitted a recruit statement admitting to civil charges for injury to personnel and personal property. Subsequently, all the charges against you were dropped. On the same date, you were notified of the initiation of administrative separation proceedings by reason of defective enlistment due to concealment of your prior police records. However, you were recommended for retention and the recommendation was later approved.

On 5 March 1983, you were counseled for deficiencies in attitude and poor conduct. You were advised that failure to take corrective action could result in administrative separation. On 22 June 1983, you tested positive to use of a controlled substance-marijuana but your record indicates you were not processed for separation. On 3 October 1984, you tested positive for use of a controlled substance-cocaine. On 9 October 1984, you received nonjudicial punishment (NJP) for use of a controlled substance-cocaine. As a result, you were notified of administrative separation processing for drug abuse and, after you waived your rights, were recommended for an Other Than Honorable (OTH) discharge characterization of service. On 20 November 1984, you administrative separation proceedings were determined to be sufficient in law and fact. On 21 November 1984, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 7 December 1984, you were so discharged.

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) a favorable characterization of service was offered to you at the time, (b) your record indicate that your administrative discharge rights were waived but that was not true, (c) you were told that you would receive a General (Under Honorable Conditions) discharge automatically if the Administrative Discharge Board was waived, (d) you were experiencing issues as you find out your mother was hospitalized with life threatening issues, (e) you applied for a hardship discharge but it was denied, and (f) you have recently retired from the job you got following your separation from service. The Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's letter of 22 March 2023 requesting supporting evidence of your claim. 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 NJP and positive urinalysis results, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offenses. 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contentions that you submitted a qualified waiver of your administrative separation processing rights or that the command agreed to such a waiver. Thus, the Board determined the evidence in the record is insufficient to overcome the presumption of regularity 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 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 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,

9/25/2023

