



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

■  
Docket No. 2956-23  
9153-13  
0402-05  
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 you did not file your application in a timely manner, the statute of limitations was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 22 May 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 this 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).

Your case was previously reviewed by the Board for Correction of Naval Records and denied relief on 24 August 2005 and 7 October 2014.

You enlisted in the United States Navy and commenced a period of active duty on 17 January 1983. On 14 September 1983, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 86, for failure to go to your appointed place of duty, Article 91, for disobeying a lawful order, and Article 121, for larceny. You were formally counseled that you were being retained on active duty, but that further misconduct could result in your administrative or punitive discharge. You did not appeal your NJP.

On 29 February 1984, you received your second NJP for violating UCMJ Article 91, for disobeying a lawful order by having alcohol in your enlisted quarters. On 4 April 1984, you received your third NJP for violating UCMJ Article 86, for failure to go to your appointed place of duty for over three and a half hours. You were formally counseled on both occasions and informed that further misconduct would not be tolerated. You did not appeal either NJP.

On 19 September 1984, you received your fourth NJP for violating UCMJ Article 107, for making a false official statement, and Article 86, for another period of unauthorized absence (UA). On 9 February 1985, you received your fifth NJP for violating UCMJ Article 86, for a period of UA totaling 10 hours. You did not appeal either NJP.

On 19 June 1985, you received your sixth NJP for violating UCMJ Article 112(a), for the wrongful use of a controlled substance (marijuana). You were again formally counseled due to your misconduct. You did not appeal this NJP.

On 16 September 1985, you received your seventh NJP for violating UCMJ Article 91, for failure to obey a lawful order. On 26 November 1985, you received your eighth NJP for violating UCMJ Article 86, for failure to go to your appointed place of duty, Article 92, for dereliction of duty by not standing proper watch, Article 91, for failure to obey an order, and Article 113, for sleeping while on fire watch. You did not appeal either NJP.

On 3 December 1985, Commander, Navy Personnel Command, directed your separation from the service due to your pattern of misconduct and your frequent involvement of a discreditable nature with civil or military authorities. On 10 December 1985, you were discharged from the Navy with an Other than Honorable (OTH) characterization of service due to your misconduct and assigned an RE- 4 reenlistment 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: (1) your desire to upgrade your characterization of service and change your reason for separation and reenlistment code, (2) your contention that you were targeted by your command due to your race, (3) the impact of racial discrimination on your conduct during service, and (4) your youth at the time the misconduct was committed. For purposes of clemency consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your eight NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated infractions to include illegal drug use. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use

is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. The Board found that your active duty misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board felt that you were afforded the support of qualified counsel throughout the disciplinary process and were aware of your rights. You never raised the issue of racial discrimination during any of your NJPs, during your separation processing, or during either of your previous BCNR petitions. During your service, you were formally counseled on numerous occasions and offered the opportunity to change your behavior, but your misconduct continued throughout the course of your enlistment. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization of service due to misconduct and an RE-4 reenlistment code.

While the Board applauds your post-service accomplishments, the Board did not believe that your in-service record was otherwise so meritorious as to deserve a change to your record. Therefore, 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,

5/30/2023

