



**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. 3319-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 23 October 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 United States Navy and commenced a period of active duty on 23 June 1989. On your enlistment application, you disclosed pre-service misconduct related to marijuana (THC) use, criminal trespassing, possession of stolen property, and destruction of property. On 11 July 1989, you were placed on drug surveillance after testing positive for THC in the accession training pipeline. On 30 July 1990, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance (marijuana). You did not appeal this NJP.

On 8 August 1990, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation (ADSEP) board. On 22 August 1990, the ADSEP board convened and, by a vote of 3 to 0, found that the basis for misconduct was met and recommended separation from the service with an Other Than Honorable (OTH) characterization. However, the ADSEP board recommended that your separation be suspended for a period of 12 months on the condition that you successfully complete Level III treatment and aftercare. Your Commanding Officer positively endorsed the ADSEP board's recommendation for suspended separation.

Within that 12-month suspension period, you again tested positive for marijuana. As a result, on 24 January 1991, you received your second NJP for violating UCMJ Article 112(a), for wrongful use of a controlled substance (marijuana). You did not appeal this NJP. Ultimately, on 21 March 1991, you were discharged from the Navy for "Misconduct - drug abuse (use)" and assigned an OTH characterization of service and 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; (1) your desire to upgrade your discharge characterization, (2) your desire to proudly state you are a veteran, (3) your youth at the time of your misconduct, and (4) the stress and pressure that you were under while serving onboard a ship. In addition, the Board noted you checked the "PTSD" box on your application but chose not to respond the Board's 26 June 2023 letter requesting supporting evidence for your claim. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation related to 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated 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. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. Finally, the Board noted that you were already granted a large measure of clemency when the Navy chose to suspend your separation for 12 months, yet you continued to commit misconduct.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH. 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, \_\_\_\_\_

10/26/2023

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