



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

█  
Docket No. 3444-23

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 reconsideration application on 27 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 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 entered active duty on 26 May 1992. Your pre-enlistment physical, on 10 January 1992, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 7 September 1992, you reported for duty on board the █ in █

On 28 July 1994, you received non-judicial punishment (NJP) for both failing to obey a lawful general regulation, and making a false official statement. You did not appeal your NJP.

On 11 January 1995, you were convicted at a Special Court-Martial (SPCM) of the wrongful use of a controlled substance (cocaine) in November 1994. You were sentenced to confinement for six months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a

discharge from the Navy with a Bad Conduct Discharge (BCD). On 5 March 1995, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of appellate review in your case, on 18 March 1996, you were discharged from the Navy with a BCD and assigned 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, your desire for a discharge upgrade and contentions that: (a) you successfully served over three and one-half years, (b) you made some mistakes due to the drug use, but you corrected your issues and would like to move forward in life, (c) a discharge upgrade is critical to your efforts, and (d) post-service you have made so many personal improvements, no longer use drugs, have completely turned your life around, and you continue striving to be better every day. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 27 April 2023 letter requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters that described post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious drug-related misconduct. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

10/30/2023

