



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

■  
Docket No. 3927-23

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 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).

You enlisted in the United States Navy and commenced a period of active duty on 19 May 2005. On 16 November 2005, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 111, for physically controlling a vehicle while drunk. You were formally counseled that further misconduct could result in your administrative or punitive discharge. You did not appeal your NJP.

On 2 August 2006, you were found guilty at Special Court Martial (SPCM) violating UCMJ Article 86, for two specifications of unauthorized absence, Article 89, for four specifications of disrespect towards a superior officer, Article 91, for two specifications of insubordinate conduct toward a Chief Petty Officer, Article 92, for failure to obey an order or regulation, and Article 112(a), for two specifications of wrongful use of a controlled substance. You were sentenced to 100 days confinement, reduction in rate to E-1, and a Bad Conduct Discharge (BCD). After appellate review by the Navy and Marine Corps Court of Criminal Appeals (NMCCA), you were

discharged from the Navy, on 19 February 2008, with a BCD as a result of your SPCM and assigned an RE- 4 reenlistment code.

Your case was previously reviewed by the Navy Discharge Review Board and denied relief on 16 February 2022.

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 to change your record to allow for an officer commission or reenlistment and your assertion that, although you did not want to complete nuclear school at the time of your enlistment, you are now ready after earning various degrees. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or 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 NJP and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated substance abuse. 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 received advice from qualified counsel through the court martial process and were aware of your rights. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD, as issued by the court. Therefore, the Board concluded you appropriately remain ineligible for commissioning or enlistment in the military services.

Ultimately, the Board did not believe that your in-service record was otherwise so meritorious as to deserve the requested relief. While the Board applauds your post-service efforts, 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,

6/6/2023

