



**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. 5345-23  
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 father's 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 20 December 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).

After two periods of honorable service, you reenlisted on active duty with the Navy on 6 March 1987. On 23 June 1987, you commenced a period of unauthorized absence (UA) until surrendering on 23 July 1987. On 21 August 1987, a Drug and Alcohol Report noted you tested positive for cocaine. On 5 October 1987, you commenced another period of UA that lasted 198 days until you were apprehended and returned to military control on 24 April 1988. On 26 June 1988, a special court-martial (SPCM) convicted you of two specifications of UA, totaling 238 days, and wrongful use of cocaine. As a result, you were sentenced to confinement for 57 days, forfeiture of pay, reduction to E-1, and a Bad Conduct Discharge (BCD).

Unfortunately, all the documents pertinent to your separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate

of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy on 20 July 1989 with a Bad Conduct Discharge (BCD) characterization of service, your narrative reason for separation is "Conviction by Special Court Martial," your separation code is "JJD," and your reenlistment code is "RE-4."

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 upgrade your discharge. The Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's 28 June 2023 letter requesting supporting evidence for your claim. For purposes of clemency and equity consideration, the Board noted you provided 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 SPCM conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug related offense. 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. The Board noted that illegal drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered the extended length of your periods of UA and the negative impact it likely had on the mission of your unit. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the documentation you submitted in mitigation and commends you for your post-discharge good conduct, 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 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,

1/10/2024

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Executive Director

Signed by: █