



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. 6199-23

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 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 6 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 began a period of active duty service on 8 March 1985. Your pre-enlistment physical examination, on 21 February 1984, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 9 January 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On 2 July 1986, you received NJP for two separate UA specifications, and for failing to obey a lawful order. On the same day your command issued you a "Page 13" retention warning (Page 13). The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 28 October 1986, the suspended portion of your July NJP was vacated and enforced due to your continuing misconduct. On the same day, you received NJP for the wrongful use of a controlled substance (cocaine), UA, and dereliction of duty. You did not appeal your NJP. Your command also issued you a Page 13 expressly warning you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 21 January 1987, you received NJP for eight separate UA specifications, and for failing to obey a lawful order. You did not appeal your NJP. On 3 June 1987, you received NJP for three separate UA specifications, insubordinate conduct, and dereliction of duty. You did not appeal your fifth NJP.

On 19 June 1987, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to drug abuse. You expressly waived in writing your right to request an administrative separation board. In the interim, your separation physical examination, on 22 June 1987, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms, and you were found to be physically qualified for release from active duty. On 15 July 1987, you commenced a period of UA that terminated after two (2) days on 17 July 1987. On 22 July 1987, you commenced another period of UA that terminated after twenty-six (26) days on 17 August 1987. Ultimately, on 21 August 1987, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

On 10 December 2021, this Board denied your first petition for relief.

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 were discharged for dereliction of duty due to being late to post regularly because you were having post-surgery complications and dealing with the anxiety from the surgery, (b) you had trust issues with doctors and hospitals after your surgery, (c) you were young and afraid to ask for help and didn't know any better, (d) you tried to deal with the pain and anxiety on your own because you were embarrassed, (e) you were physically and mentally sick and needed help but didn't know where to go or who would help you with your issues, (f) you had issues with eating and holding down food not to mention the pain from the incision in your abdominal area, (g) you really don't believe you were given enough time to heal physically so this really messed you up mentally, and (h) you have had issues with your stomach and acid reflux since your 1986 surgery. The Board noted that you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 3 August 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 as to deserve a discharge 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 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. The Board determined that characterization under OTH conditions is generally warranted for misconduct and 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 Sailor. The Board determined that the record clearly reflected your cumulative pattern of misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that you underwent an appendectomy for acute appendicitis in late December 1986, but noted that by such time you already had three (3) NJPs in your service record. The Board also noted that your medical record indicated your incision post-surgery healed well, and that there were no available medical record entries indicating any post-procedure complications.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.333 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, which all further justified your OTH characterization.

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 in discipline clearly merited your discharge. 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,

10/11/2023

