



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

█  
Docket No. 7509-23

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 22 September 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 service on 31 October 2001. Your pre-enlistment physical examination, on 27 September 2001, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 24 March 2005, you received non-judicial punishment (NJP) for unauthorized absences (UA) and for failing to obey a lawful order by being in possession of drug paraphernalia. You received the maximum punishment permitted at NJP. You did not appeal your NJP.

Following your NJP, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. After you waived your right to an administrative separation board, the Separation Authority approved and directed your separation from the Navy for drug abuse with an under Other Than Honorable conditions (OTH) characterization of

service. Ultimately, on 14 April 2005, you were separated from the Navy for misconduct with an OTH discharge characterization 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) the drug paraphernalia in your possession had been packed away and placed in storage with the rest of your belongings several years prior in █, and then was moved from storage to your new duty station in █, (b) it wasn't until you unpacked your household goods that you realized the drug paraphernalia was still part of your personal property, (c) you were arrested by civilian authorities for transportation of drug paraphernalia across state lines, but you were later released without being charged, (d) your incarceration, although brief, caused you to be in a UA status, (e) you were not treated fairly in your unfortunate incident because you were punished twice for the same incident, first by the ship's Captain, and later by the Base Commander, (f) your case did not involve drugs, and although the weed pipe was in your possession at your residence it was not readily accessible or in regular use, (g) you had not used the paraphernalia since prior to your enlistment, (h) there was not any unlawful use, possession, or distribution of any drugs in the proximity of the paraphernalia, nor the existence of any residue, (i) there was no criminal intent, (j) drug use was never a part of your service in the Navy, and (k) your misconduct discharge is the very definition of inequitable, as it was based on being UA for 24 hours due to an arrest for an incredibly minor misdemeanor offense for which you were never actually charged. For purposes of clemency and equity consideration, the Board considered 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 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 that drug-related offenses by a Sailor are contrary to Navy core values, render such Sailors unfit for duty, and pose an unnecessary risk to the safety of their fellow Sailors. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 drug-related 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. In making their findings, the Board noted you provided no evidence to substantiate your contentions.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and disregard for good order and discipline clearly merited your discharge. Even in light of the Wilkie Memo and reviewing the

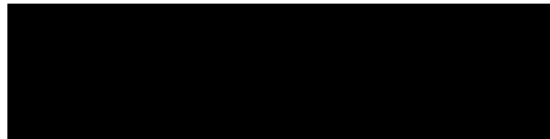


record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

10/5/2023



Executive Director

Signed by:

