



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

█  
Docket No. 9059-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your brother's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 6 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 brother's 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).

Your brother enlisted in the U.S. Marine Corps and began a period of active duty on 13 July 1987. Upon entry onto active duty, he was granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program.

On 7 September 1988, he was found guilty at special court-martial (SPCM) for wrongful use of cocaine. He was sentenced to confinement, reduction in rank, and forfeiture of pay. On 22 June 1989, he received non-judicial punishment (NJP), for seven days of unauthorized absence (UA). Then, on 6 June 1990, he received his second NJP for another seven day UA. On 8 June 1990, he was found guilty at SPCM for a one day UA, wrongful use of cocaine, and distributing .59 grams of cocaine. He was sentenced to confinement, reduction in rank, forfeiture of pay, and a Bad Conduct Discharge (BCD). After completion all levels of review, he was so discharged on 7 August 1991.

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, while in boot camp, he was exposed to poison water, the side effects was making your brother sick and dependent on drugs and alcohol, and that these caused him mood swings and emotional distress. The Board noted you checked the “PTSD” box on your application but did not respond to the Board’s request for supporting evidence. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including the letter documenting your brother’s terminal cancer condition and his death certificate.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your brother’s misconduct, as evidenced by his NJPs and SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concluded that his discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects his conduct during his period of service, which was terminated by his separation with a BCD. Finally, the Board determined that illegal drug use and distribution 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. As a result, the Board concluded his conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and offered its deepest condolences for your loss, 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 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 his 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,

12/15/2023

