



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

█  
Docket No. 9685-23  
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 application on 10 January 2024. 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy Reserve on 5 September 1990. On 28 December 1990, you entered active duty with the Navy for two years in order to attend SN training program. You were also formerly counseled on your defective enlistment in the Naval services as evidenced by your failure to disclose you pre-service drug use while in the Delayed Entry Program. On 24 September 1991, civil authorities arrested you for two counts of distribution of a controlled substance. On 25 June 1992, you received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status from 14 September 1991 to 26 March 1992, a period totaling 192 days.

On 21 June 1993, civil authorities convicted you for two counts of distribution of a controlled substance. You were sentenced to confinement for 10 years and \$249 in court costs. As a result, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense and civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service due to commission of a serious offense and civil conviction. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to commission of a serious offense. On 27 September 1996, you were so discharged.

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 and contentions that your discharge occurred over 30 years ago and your trouble was with the state of Alabama not the Navy. The Board also noted you checked the "PTSD" and "Other Mental Health" boxes on your application but you did not respond to the 16 November 2023 letter from the Board requesting supporting evidence for your claims. 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 NJP and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. The Board determined that illegal drug use or 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. The Board noted that illegal drug use or distribution in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the seriousness of your misconduct and the likely discrediting effect it had on the Navy. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 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,

1/24/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]