



**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. 9829-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 5 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Naval Reserves and began a period of active duty on 26 March 1982. On 4 November 1982, you received nonjudicial punishment (NJP) for possession of a controlled substance-marijuana. On 26 May 1983, you received a second NJP for failure to obey a lawful order, breach of peace, two instances of disrespect towards a petty officer, and communicating a threat. On 10 June 1983, you were counseled concerning abuse of a controlled substance detected during command directed urinalysis. You were advised that failure to take corrective action could result in administrative separation. On 23 June 1983, you received a third NJP for disrespect towards a noncommissioned officer (NCO). Consequently, on 25 June 1983, you were

notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. On 27 June 1983, you decided to waive your procedural rights. On 3 July 1983, you were counseled concerning a pattern of misconduct and minor infractions of the UCMJ. You were advised that failure to take corrective action could result in administrative separation. On 19 July 1983, you were evaluated by a drug and alcohol counselor as a result of your history of drug use. During the evaluation, the counselor determined that you would continue to be a disciplinary problem to the Naval service. As a result of the foregoing, the counselor recommended that you be separated from Naval service. On 19 July 1983, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 16 September 1983, you received a fourth NJP for being disrespectful in language towards a NCO, communicating a threat towards a NCO, and assault of a NCO. On 22 September 1983, your previous NJP was nullified by the higher authority after your appeal. On 27 September 1983, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 7 October 1983, 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 for a discharge upgrade and contentions that: (a) you were discharged for having three charges, (b) you appealed one of the charges and it was dropped, (c) you had only two charges and both involved you being harassed when you came in drunk, (d) you got older and realized that you should have stayed in the Navy as you only had two misconduct charges. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or 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 NJPs, outweighed these mitigating factors. In making this finding, 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. Further, the Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Additionally, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Finally, while the Board noted your fourth NJP was set aside, they found your remaining three NJPs sufficient to support your administrative separation and assigned characterization of service. The Board considered that you were processed for administrative separation prior to the NJP that was ultimately set aside on appeal.

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. 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 the 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

