



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

█  
Docket No. 10791-23

Ref: Signature Date



Dear █:

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 2 February 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 U.S. Navy and began a period of active duty service on 7 March 2001. Your pre-enlistment physical examination, on 27 February 2001, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 27 July 2001, you reported for duty on board Naval Air Station, █, █.

On 13 December 2001, you received non-judicial punishment (NJP) for assault, disorderly conduct, and making a false official statement. You did not appeal your NJP.

On 15 August 2003, you were convicted at a Special Court-Martial (SPCM) of three separate specifications of drug-related misconduct in violation of Uniform Code of Military Justice Article 112a. You were sentenced to confinement for ten (10) months, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 9 January 2004, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of appellate review in your case, on 25 February 2008, you were discharged from the Navy with a BCD 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) you have been a good citizen post-service, (b) you are requesting the discharge for Department of Veterans Affairs purposes, (c) you had issues with your father because he was in drug rehab when you were serving and you were worried about my mom and sister, (d) you were the man of the house and your lack of direction from your father was what was stressing you out and making you make a bad decision at such time, (e) the mental strain of your discharge has been of great nature and you have found it hard to find good jobs, and (f) you have delayed submitting a petition to upgrade your discharge so you could really show how you have progressed in life post-service. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 22 December 2023 letter requesting supporting evidence for your claim. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious drug-related misconduct. 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. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or

employment opportunities. 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 and discipline clearly merited your BCD. 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,

2/7/2024

