



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

█  
Docket No. 664-24  
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 14 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).

You enlisted in the Navy and began a period of active duty on 28 April 1981. Subsequently, you completed this enlistment with an Honorable characterization of service on 14 March 1985 and immediately reenlisted. On 9 July 1985, Navy Drug Laboratory, █ reported that your urine sample tested positive for THC (marijuana) and cocaine. On 25 July 1985, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 20 August 1985, you were issued an administrative remarks (Page 13) counseling warning documenting your deficiency in poor military performance and conduct as identified by your drug abuse. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation processing. On 27 September 1985, you received a second NJP for three specifications of absence from your appointed place of duty. On 25 October 1985, you received your second Page 13 counseling warning concerning your previous Violations of the Uniform Code of Military Justice (VUCMJ). The Page 13 expressly warned you that "any further misconduct will not be tolerated." On

15 November 1985, you received a third Page 13 counseling warning concerning deficiencies in your poor military performance and conduct. Specifically, VUCMJ, Article 86, unauthorized absence and Article 134, incapacitation for duty.

On 16 December 1985, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct. Although you elected to consult with military counsel, the commanding officer noted you did not attend your scheduled appointment for consultation; thereby waiving your procedural rights to consult with military counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an other than honorable characterization of service. As part of the commanding officer's recommendation, the commanding officer stated in pertinent part:

[You] signed notice of an administrative board procedure proposed action 16 Dec 85. SNM requested an appointment to consult with legal counsel prior to signing his statement of awareness. Command made appointment, but SNM did not attend appointment as arranged. [You] departed on previously approved annual leave and was subsequently ordered, via telegram and telephonic communication with his leave address to return to this command 31 Dec 85. Leave would have otherwise expired 11 Jan. SNM remains absent, [your] conduct has made him a detriment to good order and discipline as well as an administrative burden.

The separation authority approved the recommendation for administrative discharge and directed your other than honorable discharge from the Navy by reason of misconduct due to pattern of misconduct. On 27 January 1986, 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 character of service and contentions that: (1) you were improperly discharged from the Navy, (2) you were not processed through the proper channels when you were discharged and you did not have a court-martial prior to being released, (3) your leadership authorized your request for leave and, when you returned from your period of leave, you did not have a leave authorization slip, and (4) you believe that it was personal. 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 your 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 considered the seriousness of your misconduct and the fact it involved a drug offense. 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. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the

military. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your multiple administrative counselings, absences from your appointed place of duty, and wrongful use of a controlled substance not only showed a pattern of misconduct but were likely sufficiently serious to negatively affect the good order and discipline of your command. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contention that you were improperly discharged from the Navy. On the contrary, the Board found you were appropriately discharged based on your pattern of misconduct, as evidenced by your NJPs. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an other than honorable 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 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,

3/1/2024

