



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

█  
Docket No. 10598-23  
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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and review your application. A three-member panel of the Board, sitting in executive session, considered your application on 12 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 this 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 United States Navy and commenced a period of active duty on 16 March 1992. On your enlistment application, you disclosed that you had limited pre-service marijuana use (2x), but you failed to disclose your pre-service arrest record or additional drug use. On 17 June 1992, you were found guilty at nonjudicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a lawful order by underage drinking. On 8 September 1992, the Defense Investigative Service reported that between 16 September 1985 through 31 July 1991, you were arrested for Burglary, assault with a deadly weapon, drunk driving, driving without a valid license, disturbing the peace, using cocaine, under the influence of a controlled substance (cocaine), escape, misdemeanor violation of vehicle code, public intoxication, unregistered vehicle, and driving a vehicle carrying an alcoholic beverage. The

report also revealed that you failed to list the full extent of your pre-service drug use, to include extensive marijuana use and cocaine use. Further, from 11 January 1993 to 13 January 1993, you were absent from your unit without authorization.

On 22 January 1993, you were notified that you were being processed for an administrative discharge by reason of fraudulent enlistment as evidenced by your undisclosed pre-service arrest record and extensive drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 25 January 1993, your Commanding Officer recommended your separation with an Other Than Honorable (OTH) character of service based on fraudulent entry, the period of unauthorized absence (UA), and your NJP. On 30 March 1993, you were discharged from the Navy with an OTH by reason of Fraudulent Entry 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 change you reenlistment code. You contend that “the recruiter told [you] not to disclose [your] arrest history and said nothing would pop up,” you were told to lie about your past, and you did so because you were young. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

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 NJP, UA, and undisclosed pre-service misconduct, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved undisclosed pre-service drug use and a substantial arrest record. The Board determined that failure to disclose pre-service misconduct is contrary to Marine Corps values and policy and your failure to disclose required information calls into questions your trustworthiness as a service member. Finally, the Board noted you provided no evidence to substantiate your contention that you were told to lie about your preservice record of misconduct. The Board noted you admitted to preservice drug use during your enlistment processing but chose not to disclose the full extent of your misconduct. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH characterization of service and an RE-4 reenlistment code. 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, \_\_\_\_\_

1/26/2024

█