

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

> Docket No. 2021-24 Ref: Signature Date



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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 26 July 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 to 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, began your first period of active service of 1 May 1981. You had continuous Honorable service through 8 December 1992, at which time you immediately reenlisted to begin a fourth period of service.

On 26 July 1994, you were counseled for failure to provide sufficient financial support to your dependent children in the custody of your spouse. On 23 September 1994, a Naval Drug Lab message reported your drug urinalysis screening positive for cocaine metabolites. On 27 September 1994, you were subject to NJP for two specifications of violations under Article 112a of the Uniform Code of Military Justice (UCMJ), which resulted in your reduction to the paygrade of E-4, 45 days of restriction and extra duty, and two months partial forfeiture of pay.

Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse. In acknowledging your rights, you elected to request a hearing before an administrative separation (AdSep) board. The AdSep board members unanimously found that the basis for separation was met and that you should be discharged from the Navy.

The members voted 2 to 1 that your discharge should be under Other Than Honorable (OTH) conditions. Ultimately, your separation was approved and you were so discharged on 2 December 1994.

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 final discharge to "Honorable" and your contentions that you experienced untreated symptoms of post-traumatic stress disorder and mental health concerns. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to provide supporting evidence of 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. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board took into consideration you were fully aware of the Navy's "Zero Tolerance" policy regarding drug abuse based on your approximately 12 years of prior active service.

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 is attached 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,