



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

█  
Docket No. 4708-24  
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 17 June 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 Navy and began a period of active duty on 26 July 1973. On 26 May 1976, you were honorably discharged and immediately reenlisted. On 27 May 1976, you began a second period of active duty.

On 16 December 1976, you tested positive to use of a controlled substance-cocaine. On 29 December 1976, you were seen for drug evaluation and denied any drug abuse. On 2 April 1980, you were apprehended by civil authorities as a result of drug possession. Consequently, you began a period of UA as a result of being placed in civil confinement. On 7 April 1980, you

were indicted by the state of █ for possession and intent to distribute over 188 tablets of LSD. On 4 August 1980, you were convicted of the charge of possession with the intent to distribute LSD and sentenced to civil confinement for a period of three years. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to civil conviction and requested a hearing by an Administrative Discharge Board (ADB). On 13 January 1981, the ADB voted (3) to (0) that you committed misconduct due to conviction by civil authorities. On 8 June 1981, you were released on parole and ended a period of UA which lasted 433 days. The separation authority approved the ADB recommendation and you were so discharged on 14 July 1981.

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 contention that: (a) your friend was having some problems back home and he needed some fast money to get home, (b) helping your friend ended your military career, (c) you were a hard working Sailor, who advance in rate, and became the captain's small boat driver, (d) you made a bad mistake by dealing with drugs and trusting another man's word, (e) you are disabled and seeking veterans' benefits. For purposes of clemency and equity consideration, the Board noted you submitted copies of your Department of Veterans Affairs rating decision document and six character letters of support.

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 and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. The Board determined that illegal drug use and distribution 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. 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 considered the likely negative effect your conduct had on the good order and discipline of your unit, and the likely discrediting effect your civil conviction had on the Navy. Finally, 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

7/3/2024

