

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

> Docket No. 4712-24 Ref: Signature Date

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Dear

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 28 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, 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 25 August 1982. On 4 March 1983, you were dropped from your initial "A" school after failing to complete the course. On 7 May 1986, you received a medical screening which determined that you were not drug dependent. The following day, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 112a due to wrongful use of cocaine, and you were notified of administrative discharge processing for misconduct due to drug abuse. You signed your acknowledgement of notification and elected to waive your right to a hearing before an administrative discharge board. Your commanding officer recommended your discharge under Other Than Honorable (OTH) conditions. The separation authority approved the recommendation and you were so discharged on 27 May 1986.

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 and your contentions that you took many drug tests without ever having a positive result until the urinalysis that led to your administrative discharge, you were at a party where people who you knew were doing drugs, and that you left as a result. You also expressed concerns regarding the accuracy of the test, which you claim to have volunteered for after voicing concern to your ship's master-at-arms (MA) about concern for being in proximity to drug users at a party, and you wish that you would have had an opportunity to defend yourself. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no 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. Further, the Board observed that you were advised of your right to request a hearing before an administrative separation board, which you declined. To the extent that you question the validity of your urinalysis results, the Board noted that you did not submit evidence to refute the validity of the test results or as proof of potential unknowing ingestion. Finally, the Board further noted that you provided no evidence, other than your statement, to substantiate your contentions.

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,