



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

█  
Docket No. 4859-24  
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 May 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).

You enlisted in the Navy Reserve and began a period of active duty on 14 September 1981. Prior to commencing active duty, you were granted waivers for preservice drug abuse and joyriding. On 30 September 1981, you were evaluated by a medical officer as a result of testing positive for cocaine use during a urinalysis. Subsequently, you expressed your desire of not remaining on active duty. On 25 November 1981, you revealed your fraudulent enlistment during an interview with the command legal investigator. You also admitted the use of numerous controlled substances such as cocaine, marijuana, hashish, LSD, and amphetamines. On 1 December 1981, you were counseled concerning fraudulent enlistment by failing to reveal your preservice use of drugs. You were advised that further misconduct may result not only in disciplinary action but in processing for administrative separation.

On 30 April 1982, you received nonjudicial punishment (NJP) for provoking speech towards a fellow shipmate. On 2 May 1984, you received a second NJP for a period of unauthorized absence (UA) from appointed place of duty. On 3 May 1984, you were counseled concerning UA violations and advised that failure to take corrective action could result in administrative separation. On 30 June 1984, an NIS investigation was initiated following your sale of a controlled substance-two grams of suspected methamphetamine to a NIS source. On 11 July 1984, you admitted culpability to use and possession of marijuana while in service. On 15 August 1984, you began a period of UA which lasted one-day. On 10 September 1984, you received a third NJP for a period of UA. On 22 October 1984, you were convicted by special court martial (SPCM) for wrongful distribution of cocaine on board naval station. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), confinement at hard labor, reduction in rank, and forfeiture of pay. After completion of all levels of review, on 9 September 1987, 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 for a discharge upgrade and contentions that: (a) you were not guilty of the charges, and you were never in trouble during the course of your enlistment, (b) you are in need of medical assistance for disabilities such as memory loss and high blood pressure. For purposes of clemency consideration, the Board noted you submitted a copy of the Navy Discharge Review Board (NDRB) letter of rejection and NDRB request documents.

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 NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board was not persuaded by your contention that you were wrongfully convicted and noted that your 11 July 1984 voluntary statement to NIS documents your admission that you were a cocaine dealer, had transferred cocaine to a NIS source, and smoked marijuana regularly while on active duty. Therefore, the Board was not persuaded by your assertions of innocence or wrongful conviction. 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 a BCD 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 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,

6/25/2024

