



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

██████████  
Docket No. 5255-24  
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 and began a period of active duty in 1979. You received your first nonjudicial punishment (NJP) for four specifications of violations under Article 86 of the Uniform Code of Military Justice (UCMJ) due to an unauthorized absence (UA) on 9 July 1979 and failure to go to your appointed place of duty on several occasions. You again absented yourself without authority, on 10 December 1979, and remained absent until 5 February 1980, when you surrendered to military authority. On 29 May 1980, you received a second NJP for a violation of Article 92 of the UCMJ by smoking marijuana. You again absented yourself without authority during the period of 12 July 1980 through 2 September 1980. Following your surrender from this UA period, you were issued a transfer order on 22 September 1980 for pending disciplinary action. However, you failed to comply with this transfer order and again absented yourself without authority on 3 October 1980. You remained absent until 22 May 1981 and, in spite of returning, again absented yourself on 22 June 1981. Following your return to military authority, you were referred to a Special Court-Martial (SPCM). You were convicted by the SPCM with a sentence which included a Bad Conduct Discharge (BCD). The findings and sentence of your SPCM were affirmed by the Court of Military Review, on 15 November 1982,

and you were so discharged. Your service record does not contain a copy of your final record of discharge for confirmation of the precise date of your discharge. However, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

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. The Board observed that you provided no contentions or evidence with your application. 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 NJPs and SPCM, 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 considered that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Finally, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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. 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,

8/22/2024

