



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

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Docket No. 5417-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 17 June 2024. The names and votes of the panel members will be furnished upon request. 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 and commenced active duty on 25 February 1987. On 23 July 1989, you were transported to a civilian hospital and received emergency medical care for acute intoxication and possible drug ingestion. You did not report this incident to your command. However, on 23 September 1989, pursuant to a subsequent investigation into your alleged drug activities, you waived your rights and submitted to an interrogation by the Naval Investigative Service (NIS). During this interrogation you denied using illegal drugs while in the service but admitted to using marijuana and LSD prior to service. You also stated you had attempted to sell LSD to another servicemember. Regarding your hospital visit, you stated you believed you had consumed a drink tainted—unknown to you—with LSD.

On 8 February 1990, you received non-judicial punishment (NJP) for wrongful use of marijuana in May of 1989, and wrongful use of LSD in July of 1989.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged with an OTH characterization by reason of misconduct due to drug abuse. The separation authority concurred with the ADB but directed that your discharge be held in abeyance by your Commanding Officer pending further observation of your conduct. You were placed on a probationary status subject to “maintaining a conduct record clear of any disciplinary action and well as civil offenses.” The separation authority (SA) further prescribed that if at any time during the probationary period, which was scheduled expire 12 months from the date of the SA message, you violated any of the terms presented, the commanding officer was authorized to execute the discharge.

On 11 May 1990, you received NJP for unauthorized absence. As a result, your suspended discharge was executed on 31 May 1990.

You previously applied to this Board for a discharge upgrade and were denied on 20 November 2017.

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 characterization and change your narrative reason with “Secretarial Authority,” or “Miscellaneous/ General Reasons.” You contend that you had a strong service record for most of your time in the Navy and scored high marks on evaluations; however, you struggled with your sexuality as a closeted gay man and, in effort to suppress your feelings, developed an addiction to alcohol. Following your NJP for drug abuse, believing that your separation was only pending paperwork, and while still struggling to hide your sexuality and under the influence of alcohol, you left base for a week without authorization, leading to your second NJP. You further contend that you will be sober for 17 years this July and have maintained an active lifestyle as a core member of your community in ██████████ (including as an integral member of AA who has worked with the ██████████ Community Center to start an LGBTQIA+ focused AA group). You assert that you maintain a strong relationship with your family, work as a sale manager for ██████████ (a local gym), and you are an active member of your church. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug offenses. 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. The Board further 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. Additionally, the Board noted that you were given a significant opportunity to address your

conduct issues, by the fact your discharge was held in abeyance, but you continued to commit misconduct, which ultimately led to your undesirable discharge. The Board believed that considerable clemency was extended to you when your discharge was held in abeyance and, whether or not you were aware of the opportunity you were afforded, you further misconduct demonstrated your continued disregard for military authority and regulations, and your lack of suitability to remain in the Navy.

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 your post-discharge accomplishments, 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 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,

6/28/2024

