

DEPARTMENT OF THE NAVY

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

> Docket No. 7091-24 Ref: Signature Date

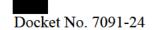


This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

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 October 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 this 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 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 a period of active duty on 29 July 1986. On 27 February 1987, you received non-judicial punishment (NJP) for failure to obey a lawful order by wrongfully possessing drug paraphernalia. On 9 April 1987, you received your second NJP for wrongful use of cocaine. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and you waived your procedural rights. You received your third NJP, on 2 June 1987, for failure to obey an order and incapacitation for the proper performance of your duties. On 8 June 1987, you were diagnosed as a drug abuser with no symptoms of dependency or withdrawal. Subsequently, the separation authority approved and directed your discharge with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 3 July 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 to upgrade your characterization of service and contentions you were young, should have received drug rehabilitation treatment, the policy has



changed over the years, and other Sailor's received preferential treatment. Additionally, the Board noted that you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and an advocacy letter.

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 your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 was not persuaded that you were treated inequitably based on the decision of the Navy not to offer you drug rehabilitation treatment. The Board noted that you were not diagnosed as drug dependent and, therefore, not entitled to treatment. Further, contrary to your contention, the Navy's drug policy has not changed since your service and remains a zero tolerance policy that requires mandatory administrative separation policy for drug abusers. Finally, the Board observed that you were given an opportunity to correct your conduct deficiencies and chose to continue to commit misconduct; which led to your administrative separation. The Board considered that, even while you were pending separation, you continued your pattern of misconduct.

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 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.

