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

[redacted]
Docket No. 7194-24
Ref: Signature Date

[redacted]

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.

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 8 January 2025. 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 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You entered active duty with the Navy on 17 November 1989. On 20 April 1990, a summary court-martial (SCM) convicted you of three specifications of failure to go to appointed place of duty, two specifications of disrespectful in language to a commissioned officer, wrongfully using alcohol while on duty, two specifications of wrongfully using provoking speech, four specifications of assault, communicating a threat, and disorderly conduct. On 12 July 1990, you received non-judicial punishment (NJP) for assault and breach of peace. On 2 August 1990, a SCM convicted you of driving while drunk, resisting apprehension, and breach of peace. On 29 August 1990, you received an evaluation from the Counseling and Assistance Center (CAAC) and were diagnosed with alcohol dependence. You were recommended to receive Level I rehabilitation treatment at a Department of Veteran Affairs (VA) hospital after separation.

On 5 October 1990, you were formerly counseled on your repeated misconduct and poor performance of duty. On 23 January 1991, you received an Alcohol Dependence Screening that determined you were alcohol dependent and recommended you attend three alcohol anonymous meetings weekly, start Antabuse, and receive Level III rehabilitation treatment from your command or from the VA hospital if separated.

Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct and commission of a serious offense. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. On 19 February 1991, you missed ship's movement. On 13 March 1991, the SA approved the CO's recommendation and directed your discharge by reason of misconduct due to a pattern of misconduct. On 3 April 1991, you received an additional NJP for wrongful use of a controlled substance, insubordination, and assault. On 9 May 1991, you was 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 discharge and contention that your OTH discharge was due to racial issues. In addition, the Board noted that you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 SCMs, 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. Further, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contention that you were discharged due to racial issues.

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 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,

1/20/2025

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