



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. 7630-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 September 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and served an initial period of active duty from 4 April 1984 through 31 March 1988. You were honorably discharged within three months of expiration of your enlistment. Notwithstanding that you were subject to nonjudicial punishment (NJP) during the first few months of your first enlistment for misconduct relating to wrongful possession of marijuana, you were approved to immediately reenlist, and you began a second period of active duty on 1 April 1988.

On 29 September 1988, you received administrative counseling regarding concerns for your indebtedness and lack of proper financial management. The following month, a Drug and Alcohol Abuse Report identified that you were abusing cocaine between 1 to 3 times per month and, although not dependent, were recommended for level II rehabilitation treatment.

On 21 December 1988, you were tried and convicted by Special Court-Martial (SPCM) for numerous violations of the Uniform Code of Military Justice (UCMJ) to include: four specifications of Article 86, for failure to go to your appointed place of duty and being absent without authority, Article 91, for disrespectful language to a superior petty officer; two specifications of Article 92, for failure to obey lawful orders, Article 112a, for wrongfully using a controlled substance, cocaine, Article 121, for stealing a camera of a value of \$200, and for 15 specifications under Article 123a, after wrongfully issuing diverse checks without sufficient funds and with the intent to defraud. As a result you were sentenced to six months of confinement at hard labor, reduction to the lowest paygrade of E-1, and a Bad Conduct Discharge (BCD). Your punitive discharge was, under a presumption of regularity, executed after being affirmed during appellate review, and you were discharged accordingly on 29 August 1989.

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 your punitive discharge was excessively harsh for failing a drug urinalysis one time while dealing with stress due to marital problems. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters. The Board noted that the documents that you listed in support of your application – a forklift certification and janitorial certificate – were not included with your request.

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 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 determined that your conduct showed a complete disregard for military authority and regulations. Additionally, whereas you purport to have had a single instance of drug-abuse misconduct, the Board found that your SPCM conviction makes the scope and severity of your in-service misconduct abundantly clear. Therefore, the Board was not persuaded by your argument that your punishment was unduly harsh.

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,

10/4/2024

