



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

Docket No. 9054-24

Ref: Signature Date

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 reconsideration application on 31 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 enlisted in the U.S. Navy and began a period of active duty service on 9 February 1987. Your pre-enlistment physical examination on, 29 January 1987, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms.

On 18 June 1990, the Commander, [REDACTED] ([REDACTED]) determined that you no longer met the standards for access to sensitive compartmented information (SCI) and

concluded you were not eligible for cryptologic duties. ██████████ directed that you be reassigned to duties not requiring SCI access.

On 5 July 1990, you were convicted at a Special Court-Martial (SPCM) for the wrongful use of a controlled substance (methamphetamines). The Court sentenced you to a reduction in rank to Seaman (E-3), forfeitures of pay, and confinement for sixty (60) days.

On 23 July 1990, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse and commission of a serious offense. On 24 July 1990, you expressly waived your rights to consult with counsel, to submit statements, and to request an administrative separation board.

In the interim, on 9 August 1990, your separation physical examination noted no psychiatric or neurologic issues, conditions, or symptoms. On 23 August 1990, you refused to participate in an inpatient drug rehabilitation treatment program. On 24 August 1990, the Convening Authority approved the SPCM sentence as adjudged.

On 21 September 1990, the Chief of Naval Personnel recommended to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) ("ASN") that you should be separated with an Other Than Honorable conditions (OTH) discharge characterization. On 26 September 1990, ASN approved and directed your OTH discharge by reason of misconduct due to drug abuse. Ultimately, on 5 October 1990, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 changes to your reason for separation and reentry code. You contend that: (a) you were young at the time at the time of your enlistment and decided to make a decision that was not becoming of a Petty Officer Second Class, (b) you are remorseful for your involvement in drug use, and you now realize that your actions were immature, irresponsible, and detrimental to your career, (c) although your acts of indiscretion were found to violate UCMJ regulations, these offenses should not be enough to prevent you from obtaining an honorable discharge, and you have confessed your mistakes and given the opportunity, would have corrected your mistakes and continued to serve honorably, (d) before the drug use incident you served honorably for over three years, and during such time you received many awards and positive marks on your record, (e) your discharge took place over thirty-four years ago, and it is unjust to continue to characterize and punish you for this discharge, (f) you have admitted your mistakes and received full punishment, both by society and by the United States Navy, through your separation, (g) you have repaid your debts to society by fulfilling the terms of the punishments for your infractions, and to this day, you are still living with the consequences of your mistakes, (h) you love your country and the United States Navy and wish to remain close to the United States Navy and veterans who have served, (i) there is no prejudice to the Government allowing you to be reevaluated and reconsidered by Board, (j) a request for reconsideration is appropriate and warranted, and (k) you were not given a reasonable opportunity to mitigate or correct your mistake/behavior and instead were separated. For purposes of clemency and equity consideration, the Board considered the totality of the documentation you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. Moreover, the Board noted, based upon your own admission, that you failed multiple drug tests leading up to your SPCM. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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,

2/12/2025

