



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

Docket No. 9430-24  
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 application on 18 December 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 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 began a period of active duty on 13 December 1983. Your record contains administrative remarks acknowledging that you were briefed on the Navy's drug abuse policy. In December 1984, you were convicted in civilian court for driving under the influence (DUI). On 22 February 1985, you received NJP for making a false official statement. On 22 February 1985, you received a Page 13 counseling retaining you in service. On 4 December 1986, you received your second NJP for wrongful use of a controlled substance. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy under Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation and you were so discharged on 16 January 1987.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) you were discharged because of a positive test for THC following a random drug screening, (2) you succumbed to peer pressure and made a bad decision to smoke marijuana at a civilian party, (3) you never denied your guilt and accepted the punishment, (4) you submitted a DD 293 within a 3-year timeframe but were denied a change in your character by a review board, (5) despite verbal abuse and harassment from your OIC with a “not in my Navy” attitude, you maintained your military bearing, excellent work ethic and excelled with a 3.4 SAT rating at final discharge review, (6) you are proud of your military service but have always harbored a deep sense of shame and remorse for your actions (7) you never denied the Navy’s actions were just at the time, but it was 37 years ago, (8) marijuana is now legalized in 24 states and, although its use still carries just punishment in the military, it doesn’t result in verbal abuse of the individual and automatic separation as you experienced in the 80’s, (9) you are now 62 and have worked for the same company for 23 years as an IT professional, (10) you survived a traumatic brain injury, open heart surgery, and have chronic heart disease, (11) you would like your grandchildren to know their grandfather served his country proudly and someday have your flag resting on the fireplace mantle next to your father’s, (12) your original request was denied due to the Navy’s position on marijuana at the time and the snubbing of my character references as “buddy letters”, (13) you’ve lived life the best you can and your shame in how you separated from the military has haunted you, and (14) with the change in the Navy’s personnel policies and how they address social change, you would like to respectfully request your character of service be upgraded. For purposes of clemency and equity consideration, the Board considered the documentation 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 your NJPs and civilian conviction, 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. The Board 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. Further, contrary to your contention, Navy policy regarding drug abuse has not changed and still requires mandatory administrative separation processing. The Board 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. Additionally, there is no precedent within this Board’s review, for minimizing the “one-time” isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, in your case, the Board observed that your record of misconduct included several incidents; including a civilian conviction for DUI.

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 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,

2/7/2025

