



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

Docket No. 10040-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

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 20 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 U.S. Navy and began a period of active duty service on 27 June 1994. Your pre-enlistment physical examination on, 14 June 1994, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms.

On 5 April 1995, following your positive urinalysis result for methamphetamine, contrary to your not guilty pleas, you were convicted at a Special Court-Martial (SPCM) for the wrongful use of a controlled substance. You were sentenced to a reduction in rank to Seaman Apprentice (E-2), forfeitures of pay, and restriction for sixty (60) days. On 6 September 1995, the Convening Authority (CA) initially approved the SPCM sentence as adjudged. However, on 11 September 1995, the CA suspended the adjudged forfeitures of pay.

On 11 September 1995, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse and commission of a serious offense. On 15 September 1995, you consulted with counsel, elected your rights to submit statements, and to request an administrative separation board (Adsep Board).

On 8 November 1995, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel, and you also provided sworn testimony on your own behalf. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you committed the misconduct as charged, and that you be separated with an under Other Than Honorable conditions (OTH) discharge characterization. However, the Adsep Board voted to suspend the separation for one year.

On 22 November 1995, your commanding officer (CO) strongly recommended your OTH separation and disagreed with the Adsep Board's discharge suspension recommendation. In January 1996, 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 OTH discharge characterization. On 17 January 1996, ASN approved and directed your OTH discharge by reason of misconduct due to drug abuse. Ultimately, on 12 February 1996, 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 change to your reason for separation. You contend that: (a) under DoD policy concerning drug and alcohol abuse at the time of discharge, you should have been given the opportunity for rehabilitation and retention afforded by the administrative board, (b) your discharge is inequitable and premised on a single instance of misconduct while off-duty despite an otherwise stellar record of military service, (c) since your discharge, the military's guidance concerning rehabilitation and second chances has changed significantly, and your misconduct was isolated and non-violent, (d) you took responsibility for your drug offense which was a youthful indiscretion, (e) given your reputation, performance ratings, and the affirmations of your potential by your peers and those in command, you should have been given a second chance or at least the opportunity to earn retention that was recommended, and (f) you are seeking to have your dignity restored and have your discharge upgraded. 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. 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.

The Board determined that your contention that, pursuant to DoD policy, you should have been given the opportunity for rehabilitation and retention as afforded by the Adsep Board to be without merit. The Board noted that the "Drug and Alcohol Abuse Report" (OPNAV 5350/7 form) prepared following your positive urinalysis test stated: (a) your past and present military work record was fair (block 30), and (b) you did not possess potential for future service (block 31). Further, the Board observed that your case received all required levels of review; which ultimately determined you lacked potential for future service. The Board found no abuse of discretion by your command or the reviewing authorities in their determination.

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 blatant 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,

1/14/2025

