



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

██████████
Docket No. 10615-24
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 21 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).

You enlisted in the U.S. Navy and began a period of active duty on 31 March 1980. On 1 July 1981, you were issued administrative remarks retaining you in the naval services, referencing the disposition of drug abuse cases, and advising you that further misconduct may result not only in disciplinary action but in processing for administrative discharge. Although you were afforded an opportunity to submit a statement, you chose not to do so. On 6 July 1981, you were evaluated at the Counseling and Assistance Center (CAAC) and found not physically nor psychologically dependent upon drugs but considered a drug abuser. It was recommended that you participate in the Substance Abuse Program and Navy Drug Safety Action Program beginning 17 August 1981. On 21 July 1981, a command directed urinalysis screening returned positive for cocaine, but you were determined not to be drug dependent. On 27 July 1981, you commenced a period of unauthorized absence (UA) which ended in your surrender on 4 August 1981. On 8 September 1981, you were terminated from the CAAC Substance Abuse Program for lack of participation, absences, and non-cooperation. Consequently, you were notified of your pending administrative processing by reason of Convenience of the Government, at which time you elected your right to consult with counsel and to submit a statement. In your statement,

you asserted that your command unfairly downgraded your performance due to present issues; such as your positive urinalysis and, while participating in CAAC, your command was already in the process of discharging you. You acknowledge having past problems but believed you had moved forward; as you were consistently on time and completing your duties. During this time, you had to take emergency leave and were classified as UA since your command had mistakenly checked in the wrong person. Despite this, you were recommended for promotion to Third Class (E-4) even though you were not allowed to take the advancement exam. Additionally, you were recommended for a letter of appreciation; which you never received. These events weighed heavily on you; especially after reviewing your evaluations and realizing that your command was intent on separating you one way or another. However, when comparing past evaluations to recent ones, you recognize that you were not performing well before but had been improving and getting back into the rhythm of your job. While you were willing to accept discharge, you believe it should be classified as Honorable based on your progress and commitment to your duties.

Ultimately, the commanding officer directed your administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service adding, "[Petitioner] was first considered for an administrative discharge as part of Project Upgrade because of substandard performance and minor infractions of the Uniform Code of Military Justice, which was dealt with on the Division Officer and Executive Officer levels. While being processed under Project Upgrade, it was decided that [Petitioner] would be given the opportunity to demonstrate improved performance in order to avoid a discharge which he did not desire. Near the end of the eligibility period for Project Upgrade it became apparent that [Petitioner's] performance was not improving enough to make him an asset to the Navy. Because of the time limitations of Project Upgrade, it was impossible to continue processing [Petitioner] for a discharge under the program. Therefore, he was administratively discharged by reason of Convenience of the Government, even though he had no record of nonjudicial punishment or of his several infractions of the Uniform Code of Military Justice." On 25 September 1981, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 to be issued separation pay. You contend you never received your last paycheck/separation pay and you should have received an Honorable discharge. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your positive urinalysis screening and lack of participation in the substance abuse program, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that 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. Additionally, the Board noted that your conduct showed a complete disregard for military authorities. Further, the Board noted you were provided several opportunities to correct your conduct deficiencies during your service, but you continued to

commit additional misconduct; which led to your GEN discharge. Furthermore, the Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would clearly be inappropriate. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were not properly paid. Absent substantial evidence to the contrary, the Board determined that insufficient evidence exists to overcome the presumption of regularity that you were properly paid. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

As a result, 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 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,

2/14/2025

