



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

██████████
Docket No. 11817-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 21 February 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 or about 1 September 1998. Your pre-enlistment physical examination, on 30 March 1998, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You stated that you never had an adverse reaction to a serum, drug, or medicine on your self-reported medical history.

On 24 January 2000, you received non-judicial punishment (NJP) for willfully disobeying a lawful order from a superior commissioned officer. You did not appeal your NJP. On

31 January 2000, your command issued you a "Page 13" counseling warning (Page 13) documenting your NJP. The Page 13 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 10 September 2000, you commenced a period of unauthorized absence (UA) that terminated on 4 October 2000. On 8 November 2000, you received non-judicial punishment (NJP) for: (a) insubordinate conduct, (b) two (2) separate specifications of a failure to obey a lawful order, (c) your 24-day UA, and (d) the wrongful use of a controlled substance. You did not appeal your NJP.

Following your second NJP, your command notified you of administrative separation proceedings by reason of misconduct due to: (a) the commission of a serious offense, (b) a pattern of misconduct, and (c) drug abuse. You expressly waived in writing your right to request an administrative separation board. Ultimately, on 29 January 2001, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (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 contentions that: (a) at the time of your discharge you were a young man with much to learn about the world, and you made the mistake of refusing order to receive the anthrax vaccination, (b) you disobeyed that order and have regretted that decision for many years, (c) after your first NJP you feared the repercussions of refusing the vaccine a second time, (d) you continued your pattern of poor decision and decided to take matters into your own hands and purposely failed a drug test to protect yourself against disobeying a second lawful order to receive the anthrax vaccination, (e) in hindsight your decisions were disgraceful and not warranted, (f) you are a patriot, love your country, and have carried this mistake with you for many years, and (g) your appeal is for the Board to look at your character now as a teacher and law abiding citizen, and you ask that your character be considered in helping you move on from your past mistakes. For purposes of clemency and equity consideration, the Board considered the totality of the evidence 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 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 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 you left the Navy while you were still contractually obligated to serve, and you went into a UA status without any legal justification or excuse for twenty-four (24) days. Additionally, the Board determined that the order to receive that anthrax vaccination was a

lawful military order only to be disobeyed at one's peril. 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 cumulative 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,

3/17/2025

