



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

Docket No. 12092-24
Ref: Signature Date

Dear Petitioner:

This is in reference to your application for correction of your husband's ("the service member") naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of the service member's 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 28 April 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 the service member's 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 service member enlisted in the Navy and commenced active duty on 19 February 1986. On 11 March 1988, the service member received non-judicial punishment (NJP) for wrongful use of marijuana. Additionally, he was issued an administrative remarks (Page 13) counseling concerning deficiencies in his performance and/or conduct. He was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 9 July 1988, the service member commenced a period of UA that ended on 10 July 1988. On 14 July 1988, he was UA for one day. On 21 July 1988, the service member received NJP for UA, disobeying a lawful order from an officer, and disobeying a lawful order from a chief petty officer. On 2 August 1988, the service member commenced a period of UA that ended in his surrender on 28 September 1988.

On 16 November 1988, the service member was convicted at Special Court Martial (SPCM) of UA, wrongful use of marijuana, and breaking restriction. He was sentenced to forfeitures,

confinement, and a Bad Conduct Discharge (BCD). While in confinement, he received a substance abuse evaluation where he disclosed episodic abuse of marijuana, cocaine, and methamphetamine. He was found not dependent and responsible for his actions. Subsequently, the findings and sentence in the service member's SPCM were affirmed and he was issued a BCD on 19 September 1989.

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 to change the service member's discharge characterization of service in order to qualify for burial benefits and your contentions that the service member's misconduct was mitigated by untreated mental health conditions because of "abuse endured by father, while he was in service," and a death in the family during his enlistment. You also checked the "Mental Health" box on your application but did not respond to the 19 February 2025 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered your statement and the evidence you submitted in support of your application that included the service member's post-discharge awards, certificates, and degree.

After thorough review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that the service member's misconduct, as evidenced by his NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his 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 also observed the service member was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his BCD. His conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. Further, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits.

As a result, the Board determined that there was no impropriety or inequity in service member's discharge and concluded that his misconduct and disregard for good order and discipline clearly merited his discharge. While the Board carefully considered the evidence you submitted in mitigation and commends the service member's post-discharge accomplishments, even in light of Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting 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 the service member's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Despite the Board's decision to deny relief in your case, they expressed their deepest condolences for your loss.

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,

5/19/2025

