



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

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Docket No. 12322-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 March 2025, has carefully examined your current request. 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 previously applied to this Board for a discharge upgrade and were denied on 14 July 2023. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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) the evidence demonstrates that the Board's previous denial was based on the consideration of a false statement regarding an unreasonable unauthorized absence (UA), was inequitable, and you should have been given a General or Honorable discharge pursuant to pursuant to Section 2b. of MILPERSMAN 3630620, (b) such MILPERSMAN guidance requires you to be issued and Honorable or General discharge because your discharge was issued in connection with the results of a "fitness for duty" (FFD) urinalysis, (c) without a first positive urinalysis test, you would not have been subject to subsequent FFD urinalyses, (d) the first positive urinalysis result was the only instance of misconduct throughout your 8 years in the Navy, (e) therefore your separation was based solely on the second positive FFD urinalysis, (f) if no positive UA first, then there is not FFD urinalysis, thus, the Navy was obligated to grant you an Honorable or General discharge, (g) a FFD urinalysis cannot be considered in determining your character of service, and (h) the only misconduct in your record that the Board can consider in determining to upgrade your discharge was the first positive urinalysis that subjected you to FFD urinalyses. 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 to deserve an 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 by a Sailor is contrary to military core values, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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. The Board determined that characterization under Other Than Honorable (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 drug-related 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 your OTH characterization was justified even when taking into account only the first positive urinalysis results.

Moreover, the Board determined that you did not provide any convincing evidence to corroborate or substantiate your contention that the FFD urinalysis was improperly used by either your command or the Separation Authority for determining your OTH characterization. The Board concluded that the evidence you presented was insufficient to overcome the presumption of regularity. The Board noted and understood that while an FFD urinalysis can be used as a basis for separation, it cannot be used for discharge characterization. The Board concluded there is no evidence in the record to suggest that the Separation Authority used any

urinalysis test result, other than the very first positive test for cocaine, in determining your character of service.

Further, the Board determined any contention that your four-day UA was based on a false premise or erroneous was not persuasive. As part of their deliberations, the Board specifically reviewed the official Page 6 entry documenting such UA period¹.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your 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 further 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,

3/24/2025

[REDACTED]

¹ The Board noted that this UA is officially documented in your service record with a P601-6R ("Page 6") entry signed by Navy Judge Advocate [REDACTED] AGC, USN, by direction of the commanding officer of the USS [REDACTED]