



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

██████████
Docket No. 12529-24
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 6 February 2025. The names and votes of the members of the panel 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 this 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.

A review of your record shows you enlisted in the Navy and commenced active duty on 28 June 2000. After a positive urinalysis on 22 January 2018, Commanding Officer (CO), ██████████ ██████████), notified you of Administrative Separation (ADSEP) processing by reason of misconduct due to drug abuse. Additionally, on 13 March 2018, CO, ██████████ C, imposed nonjudicial punishment (NJP) after finding you guilty of wrongfully using cocaine. On 2 April 2018, Commander, ██████████ ██████████ set aside the NJP due to a procedural error but authorized CO, ██████████, to conduct additional proceedings under Article 15 of the Uniform Code of Military Justice for the same offense involved in the 13 March 2018 NJP proceedings but disallowing a more severe punishment than previously awarded.

On 6 April 2018, CO, ██████████, again imposed NJP for wrongful use of cocaine, awarding a reduction in rank to E-5. You did not appeal the NJP.

On 30 May 2018, an Administrative Discharge Board (ADB) convened and determined the evidence supported the basis for separation and recommended separation with a General (Under Honorable Conditions) (GEN) characterization of service. In a 5 June 2018 Letter of Deficiency (LOD), your counsel requested the ADB findings be set aside and a new ADB granted due to a substantial violation of your rights. Although the response to the LOD is not available in the record, the record contains an ADSEP notification dated 23 July 2018, indicating the convening of a new ADB. On 25 July 2018, an ADB convened and again determined the preponderance of the evidence supported the basis for separation but recommended retention. Again, your counsel submitted a LOD.

By memorandum of 15 August 2018, CO [REDACTED], recommended [REDACTED] separate you based on the ADB's findings of misconduct. Specifically, the CO noted "[d]rug use is anathema to service in the Navy. Finding that the member did knowingly and willingly use a controlled substance does not support a recommendation to retain." Further, the CO stated retention would go against good order and discipline and set a precedent that drug abuse is condoned. In his endorsement provided to Commander, Navy Personnel Command (PERS 832), [REDACTED] concurred with the CO's recommendation to separate you with a GEN characterization of service. On 27 March 2019, you were so discharged and assigned a RE-4 reentry code.

In your petition, you have requested an upgrade to your characterization of service and "a discharge code to reflect entire career evaluations, medical records 2000-2019, PTSD, and letters of rating reflecting 100% disability and letter from medical stating unable to work." Further, you stated on your DD Form 149 that you "deserve an honorable discharge with early medical retirement." Through your statement, you contend your "sacrifice to this country and [your] children's sacrifice while [you] served" should not be erased. Additionally, you stated the Board should "review sexual assault rights" because you were "strangled by three out of four husbands." As supporting evidence, in addition to your comments on the DD Form 149, you submitted a 6 December 2024 letter from the Department of Veterans Affairs (VA), VA Regional Office for Veteran Readiness and Employment.

The Board carefully reviewed your petition and the material you provided in support of your petition, and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of his/her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his/her disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. In particular, the Board observed you failed to provide evidence you had any unfitting condition within the meaning of the DES. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred.

With respect to your reliance on post-service findings by the VA, the Board, noting you did not provide any supporting evidence of your VA disability benefits, considered that the VA does not make determinations as to fitness for service as contemplated within the service DES. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board deferred consideration of your request to upgrade your characterization of service from GEN because you have not exhausted your administrative remedies with the Naval Discharge Review Board.

Additionally, the Board, noting you indicated "Reprisal/Whistleblower" in block 14 of the DD Form 149 but provided no discussion of or evidence in support of reprisal, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's (SECNAV's) decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the SECNAV acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

3/3/2025

