



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

██████████
Docket No. 0783-25
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 19 May 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 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, 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).

As part of your enlistment processing, you were granted an enlistment waiver for marijuana use and traffic infractions. On 24 October 1984, you signed the Navy Drug and Alcohol Abuse Statement of Understanding which outlined the Navy's substance abuse prevention policies and the consequences of any violation. On 11 March 1985, you enlisted in the Navy and began a period of active duty. On 4 April 1985, you were issued administrative remarks documenting your retention in the Navy despite a determination of fraudulent entry; based on your failure to disclose pre-service use of marijuana and cocaine. On 20 November 1985, you were issued additional administrative remarks documenting your retention in the Navy and noting conduct discrediting to the naval service; specifically, your 19 November 1985 arrest on ██████████ for possession of an open alcoholic container. On 3 January 1986, while assigned to ██████████, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. On 7 February 1989, while attending Master Diesel Mechanic School at Service ██████████, you received a second NJP for the wrongful use of cocaine.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy for drug abuse and commission of a serious offense (COSO); at which time you

elected your procedural rights to consult with counsel and requested to present your case to an administrative discharge board (ADB). On 6 March 1990, an ADB was convened and determined that a preponderance of the evidence supported a finding of misconduct for drug abuse and COSO. The ADB recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. Your commanding officer forwarded this recommendation to the separation authority (SA) concurring with the ADB's recommendation and adding, "I agree with the finding of the Administrative Board. [Petitioner] did use cocaine and drugs cannot be tolerated in the Navy, especially since this was his second drug offense. [Petitioner] was evaluated by ██████████ physician ██████████ and was determined to not be dependent on drugs." Ultimately, the separation authority approved the recommendation and you were so discharged on 3 April 1990.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade contending your discharge was improper because the chain of custody aboard ██████████ ██████████ was compromised and your positive urinalysis was not valid because of the way the urine samples were collected and sorted. The NDRB denied your request for an upgrade, on 19 April 1991, based on their determination that your discharge was proper as issued.

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 your contentions that: (1) you disclosed pre-service drug use and were granted an enlistment waiver, (2) you never failed a drug test during your time on the unit until the final urinalysis; which followed an incident where urine sample, originally secured in the ship's brig, were reportedly compromised due to a break-in. After the ship returned to ██████████, the samples were recapped and sent for testing, resulting in positive results for you, several others, and an officer. While others were granted retests that returned negative, you were denied the opportunity due to your prior drug waiver and were administratively discharged, (3) your attorney later arranged independent drug and hair tests, both of which were negative, but the results were ruled inadmissible because they were not conducted by Navy authorities. You requested a Navy retest but were told it was not permitted, (4) you believe your discharge was unjust and discriminatory, and (5) you did not commit the crime, served honorably, attained the highest rank available for your time in service, earned your Enlisted Surface Warfare Specialist qualification, and continue to carry the burden of an OTH discharge more than 30 years later. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 214, a personal statement, and advocacy letters.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved drug offenses. 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 noted that marijuana and cocaine use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also concluded that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your

OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Therefore, the Board concluded 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.

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. 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,

6/4/2025

