

DEPARTMENT OF THE NAVY

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

> Docket No. 2306-25 Ref: Signature Date



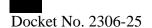
This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 18 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 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 29 June 1992. Your pre-enlistment physical examination on 24 March 1992, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. As part of your enlistment application, you disclosed a pre-service DUI offense. On or about 18 October 1992, you reported for duty on board the home-ported in

On 6 April 1994, a Navy Drug Screening Laboratory message indicated that you tested positive



for cocaine at a level of 1,841 ng/ml. The Department of Defense testing cutoff level for cocaine was 150 ng/ml. On 20 April 1994, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine) and for soliciting another Sailor to commit an offense; namely, to intercept your urine sample before it was sent to the drug lab for testing. You did not appeal your NJP.

Your drug dependency screening indicated that you were not psychologically or physically dependent on either drugs or alcohol. On 24 May 1994, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You consulted with counsel and elected your right to request an administrative separation board (Adsep Board).

On 3-4 November 1994, an Adsep Board convened in your case; at which you were represented by both civilian and military counsel. You provided sworn testimony on your own behalf. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence presented proved you committed misconduct due to drug abuse. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 15 December 1995, you were separated from the Navy for misconduct with an 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) you are requesting the character of your discharge be changed to Honorable in accordance with the Department of Veterans Affairs (VA) determination that aside from your NJP, that all other evidence in your personnel file showed Honorable service, (b) a private polygraph test you underwent in June 1994 indicated that you were truthful when you denied the charges of using a controlled substance and wrongfully soliciting a criminal offense, and (c) you have been trying to get this change done since you were separated from the Navy. For purposes of clemency and equity consideration, the Board considered the totality of the documentation you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board unequivocally concluded that your administrative separation was legally and factually sufficient and that no error materially prejudicial to your substantial rights was committed. The Board determined that you did not provide convincing evidence to substantiate or corroborate your evidentiary and factual sufficiency contentions regarding your wrongful use and solicitation offenses. The Board determined the evidence you provided was insufficient to overcome the presumption of regularity. Instead, the Board determined that you were found guilty of your drug use because you were indeed guilty and was not willing to re-litigate well-settled facts that are no longer in dispute from an NJP and Adsep Board occurring over thirty (30) years ago. The Board also noted, contrary to your civilian polygraph, that you failed an NCIS polygraph. The Board also determined that there was no credible or convincing evidence in the record regarding any command misconduct, improper motives, or abuses of discretion in the investigating, handling,

and processing of your drug-related misconduct and your subsequent administrative separation. 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 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, 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 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 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.

Finally, the Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and blatant 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.

