



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

[REDACTED]
Docket No. 2997-25
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 4 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 application¹ 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).

You enlisted in the U.S. Navy and began a period of active duty service on 28 May 1985. On 24 April 1985, you signed and acknowledged the "Drug and Alcohol Abuse Statement of Understanding. Your pre-enlistment physical examination, on 26 April 1985, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 21 September 1985, you reported for duty on board the [REDACTED].

¹ The Board noted that your counsel submitted a "corrected" legal brief for the Board's consideration. However, the brief did not arrive in time for the Board to review and consider it prior to 4 April 2025. Notwithstanding, the only apparent changes to the "corrected" brief appeared to be solely a spelling change to your middle name as stated on the brief in multiple locations, which would not have had any material impact on the Board's decisions.

On 20 January 1987, you were convicted at a Summary Court-Martial (SCM) of the wrongful possession of a false armed forces ID card. Your SCM sentence included a reduction in rank to E-2; forfeitures of pay, and restriction. On 12 February 1987, the Convening Authority approved the SCM sentence.

On 13 June 1988, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). You did not appeal your NJP.

On 13 June 1988, you underwent a drug dependency evaluation. The Medical Officer (MO) determined: (a) you were not psychologically/physically dependent on alcohol/drugs, (b) you were a recreational or experimental user, and (c) you did not require hospitalization for detoxification. The MO recommended your administrative separation.

On 13 June 1988, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and drug abuse. You consulted with counsel and initially elected your right to request an administrative separation board; but you later waived such right. Your separation physical examination, on 17 June 1988, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling.

Your commanding officer (CO) recommended to the Separation Authority (SA) that you receive an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation, your CO stated, in part:

[Petitioner] has been on board this command for 33 months. He has a summary court-martial conviction for possession of a false identification card. He recently tested positive for cocaine as part of a unit sweep. His story about being present at a party where, unbeknownst to him, cocaine was sprinkled in the food and drink is, simply, not credible and I found him guilty of cocaine use at Captain's Mast. [Petitioner] is no longer acceptable as a member of my crew. He has no potential for rehabilitation or further useful service. I most strongly recommend his immediate separation from the naval service with an other than honorable discharge.

On 11 August 1988, the Separation Authority approved and directed your separation for misconduct due to drug abuse with an OTH discharge characterization. Ultimately, on 19 August 1988, 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 change to your reason for separation. You contend that: (a) you would like to take this opportunity to apologize to the Board and to the United States Navy as a whole, and you understand that Sailors are held to a higher standard of personal conduct and that your actions fell below such standard, (b) you take

full responsibility for your decision to abuse cocaine and have had to live with the regret of that decision your entire life, (c) your drug abuse reflects an instance of poor judgment that no longer accurately reflects the life you live now or the man you have proven yourself to be, (d) in light of your honorable pre-misconduct service record, your chain of command should have enrolled you in a substance abuse rehabilitation programs instead of separating you from the Navy prematurely, (e) your chain of command made a material error of discretion by separating you with an OTH discharge status instead of a "General under Honorable Conditions" or "Honorable" discharge status, (f) you have been unjustly stigmatized and harmed by your OTH discharge, which has been recognized by various courts, (g) post-service you have made a distinguished career for yourself as a transit bus driver, trolley operator, and currently as a driver and owner/operator transporting hazardous chemicals to and from companies across America, and (h) you have been left with an indelible stain on your character due to your separation from the Navy, and you are submitting this petition so you may reclaim your honor and restore your good name. 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 as to deserve a discharge 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 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. The Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. 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.

The Board determined your "discretionary error" argument without merit. The Board noted that the Separation Authority (COMNAVMILPERSCOM) determines your discharge characterization, not your command, and providing you with a substance abuse rehabilitation program instead of separation was not a viable option for your command. Drug abuse is an offense requiring mandatory separation processing and such offense did not provide the command with any discretion whether or not to process you for separation at such time. Lastly, the Board noted that while you state you take full responsibility for your drug abuse, that stands in stark contrast to your NJP hearing in June 1988 where you systematically denied ever knowingly using cocaine.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your drug-related misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence

you submitted in mitigation and commends you for your post-discharge accomplishments, 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 cumulative 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.

Sincerely,

4/15/2025

