



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

[REDACTED]
Docket No. 3215-25
Ref: Signature Date

[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 11 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).

You originally enlisted in the U.S. Navy and began a period of active duty service on or about 22 June 1979. Your pre-enlistment physical examination on 16 April 1979, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. Your last reenlistment occurred on 29 March 1991.

On 10 September 1991, a Navy Drug Screening Laboratory message indicated that you tested positive for cocaine at a level of 546 ng/ml. The Department of Defense testing cutoff level was 150 ng/ml. Following your positive test result, you underwent a drug dependency screening and were determined not to be drug dependent.

On 17 September 1991, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). You were found guilty, and you appealed your NJP to higher authority while still maintaining your innocence.

On the same day, 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). In the interim, on 5 November 1991, the General Court-Martial Convening Authority denied your NJP appeal.

On 13 November 1991, an Adsep Board convened in your case. You were represented by legal counsel and 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 separated with a General (Under Honorable Conditions) ("GEN") characterization of service but, by a 2-1 vote, also voted to suspend the separation for twelve (12) months.

On 3 December 1991, your commanding officer (CO) recommended to the Separation Authority (SA) that you be immediately separated with a GEN discharge characterization. In his recommendation, the CO stated, in part:

SNM was afforded all rights and reasonable requests. Due to the lack of precedent in SNM's military career as a substance abuser, the chain of command sample handling and drug lab testing procedures were thoroughly examined to ensure there was no reasonable possibility of error. Based upon the proceedings of the Administrative Board and my subsequent in-depth investigation into matters presented by SNM, I concur with the finding that he is guilty of misconduct due to drug abuse. Command representatives...escorted SNM to visually verify that the urine sample in question was properly labelled with the same batch number, sample number, social security number, and lab accession number...Although SNM has a long and commendable record of professional naval service, the evidence concerning levels of cocaine found in his urine sample taken on 23 August 1991 is conclusive. In keeping with...the concept of "Zero Tolerance" for officers, chief petty officers, and petty officers, I recommend immediate administrative separation of [SNM] with a General under Honorable Conditions characterization.

Your separation physical examination, on 9 December 1991, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or conditions. Ultimately, on 31 December 1991, you were separated from the Navy for misconduct with a GEN discharge characterization and were assigned an RE-4 reentry code.

On 28 September 1994, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. You had contended, in part, that your "General Under Honorable Conditions does not agree with my heart and soul, due to the fact that it was unwarranted with the bad and improper procedures in my drug screening paperwork. (The urine sample custody document and the urine custody log)." The NDRB, however, noted that the discrepancy on the urine sample custody document had no bearing on your discharge and that you failed to show that there existed an error of fact, law, procedure, or discretion at the time of the issuance of your discharge.

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 desire for constructive service credit to qualify for retirement. You contend that: (a) your discharge should be corrected due to an improper urine report, (b) you were put through so much hatred by your command, (c) such hatred stems from you not being let go to see your wife give birth to your daughter, not being put in charge of the division when you reported aboard, and being taken out of your division, and (d) you were unjustly released due to racism and the same racism kept you from going up for the Officer Candidate Program¹. 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 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 credible and/or convincing evidence to substantiate or corroborate your sweeping evidentiary and factual sufficiency contentions regarding the urinalysis testing package and documentation. Instead, the Board determined that you were found guilty of your drug use because you were indeed guilty, and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from an NJP and Adsep Board occurring over thirty-three (33) years ago. The Board also determined that there was no credible evidence in the record regarding any command misconduct, racism, 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 as to deserve a discharge upgrade and constructive service credit to become pension eligible and/or back pay. 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 GEN or 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 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.

¹ The Board noted you checked the "PTSD" box, apparently in error, and crossed out your selection with your initials. Additionally, the Board noted you provided no evidence regarding a mental health condition.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your last enlistment was approximately 2.87 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your last enlistment were a direct result of your serious misconduct and failure to conform to basic military standards of good order and discipline, all of which further justified your GEN characterization and no higher.

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.

Sincerely,

4/16/2025

