



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

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Docket No. 3741-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 July 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).

You enlisted in the Navy and commenced active duty on 18 December 1981. On 24 October 1983, you received non-judicial punishment (NJP) for sleeping on watch. On 12 June 1984, you received NJP for wrongful use of a controlled substance (THC). On 13 July 1985, you received a third NJP for wrongful use of a controlled substance (cocaine). You did not appeal any of your NJPs.

You were subsequently notified of intended administrative separation processing for misconduct due to pattern of misconduct and drug abuse. You consulted with legal counsel and elected all rights available to you in the separation process, including the right to appear before an administrative discharge board (ADB). On 25 August 1985, the ADB unanimously found that you had committed misconduct and should be separated with an Under Other Than Honorable Conditions (OTH) characterization of service. After completion of all levels of review, you were so discharged on 27 September 1985.

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 to upgrade your characterization of service and your contentions that you were discharged despite denying any drug abuse, there were significant issues with how the Department of Defense (DOD) drug testing program at the time of your alleged positive urinalysis, the DoD and Navy formally acknowledged that errors in the program resulted in thousands of false positives and the unnecessary separation of Servicemembers, and these acknowledged errors call into question the legitimacy of your own test results. Further, you argue your commanding officer expressed reservations with the OTH recommended by the ADB and believed a General (Under Honorable Conditions) characterization of service was more appropriate under the circumstances. Lastly, you contend your post-service achievement, over the last 40 years, provides basis for relief. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and legal brief with exhibits.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness and repeated nature of your misconduct and the fact it twice 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 additionally noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military.

Regarding your contention that your positive drug tests resulting from a flawed drug testing program, the Board considered that you tested positive twice, for two different drugs at least a year apart, and that your case was closely examined by an ADB. The Board was also not convinced by your ADB argument that your drug ingestion was possibly innocent due to your severe intoxicated state. In the end, the Board opined it unlikely that you were the victim of two false positive urinalyses or innocent ingestion, and determined the presumption of regularity applies to your positive urinalyses.

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

7/24/2025

