



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

██████████
Docket No. 5161-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your late husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session, on 8 September 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 service member's (SM) 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).

SM previously applied to this Board for a discharge upgrade and was mostly recently denied relief on 11 December 2023. The summary of his service remains substantially unchanged from that addressed in the Board's previous decision.

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 SM's discharge characterization of service and change his narrative reason for separation. You contend that correction should be made to SM's record because his misconduct resulted from youthful indiscretion, was non-violent in nature, the punishment no longer fits the misconduct, 25 years have passed, he kept a clean post-service record, and he was diagnosed with terminal stage IV colon cancer related to

exposure to burn pits in the Gulf War. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and a legal brief with exhibits.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his three non-judicial punishments and summary court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact it included a drug offense. 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 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 found that SM's conduct showed a complete disregard for military authority and regulations. The Board observed he was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. SM's conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command.

As a result, the Board determined that there was no impropriety or inequity in SM's discharge and concluded his misconduct and disregard for good order and discipline clearly merited his discharge. While the Board carefully considered the evidence you submitted in mitigation and appreciates that SM rehabilitated himself after his discharge, 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 SM's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board expressed its deepest condolences for your loss.

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,

9/15/2025