



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

█  
Docket No. 2763-24  
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 30 September 2024. 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, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and 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 also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 Navy and commenced active duty on 17 April 2000 after receiving a waiver for felony assault with a deadly weapon. On 11 August 2004, you commenced a six-day period of unauthorized absence (UA), during which you were arrested by civil authorities for domestic

violence and methamphetamine use, that ended in your surrender on 16 August 2004. Upon return from UA, you submitted a urine sample for drug testing and informed your command that you would test positive for methamphetamine. During this period, you were recruited to work with the Naval Criminal Investigative Service (NCIS) and Drug Enforcement Agency (DEA) but were subsequently fired for attempting to steal methamphetamine from a drug dealer. On 30 August 2004, your command received notification that your urine tested positive for amphetamine and methamphetamine. On 22 September 2004, you were diagnosed as drug dependent and scheduled for in-patient drug rehabilitation to begin on 25 October 2004. On 13 October 2004, you received non-judicial punishment (NJP) for UA, failure to obey an order or regulation, wrongful use of a controlled substance and assault. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse and you waived your right to have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service. On 25 October 2004, you reported to your scheduled substance abuse treatment, refused to participate in the program, and were dropped from the program due to refusal to participate. Therefore, you were discharged from the Navy the same day. Post-discharge, your command received another urinalysis report indicating you tested positive for amphetamine, methamphetamine, and tetrahydrocannabinol (THC).

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you had an extensive history of pre-service drug use, manufacture, and distribution and joined the Navy to avoid additional jail time, your misconduct was a return to pre-service conduct due to drug addiction and the stress and exhaustion after the birth of your daughter, post-service you have become clean and sober and worked as a contractor for the Navy, and that you are need of Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered your statements, the advocacy letters, the VA non-eligibility letter, and the court documentation you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 8 August 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service.

The Petitioner joined active duty Navy service in April 2000. In August 2004, he was arrested by civilian authorities for domestic violence and being under the influence of methamphetamines. That same month, he was recruited to work with NCIS/DEA, but was fired shortly thereafter when he tried to steal methamphetamine from a dealer. In September 2004, he was evaluated by a medical officer who diagnosed him with Methamphetamine Dependence, and recommended inpatient treatment. He received NJP in October 2004 for

unauthorized absence (UA), failure to obey a lawful order, wrongful use of a controlled substance, and assault. On October 25, 2004 upon check-in to inpatient substance abuse treatment, he refused to continue and thus he was no longer eligible for treatment. He was separated from service in October 2004 with an Other than Honorable characterization of service due to misconduct – drug abuse.

The Petitioner submitted active duty accomplishments, letters of recommendation from two family members, Superior Court of █ dated January 25, and notice of noneligibility for treatment at the VA. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Based on his statement, he has an extensive pre-service history of substance abuse and criminal activity. He did not submit any medical evidence to support his claim.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given an opportunity to mitigate the consequences of your conduct issues, but you continued to commit misconduct, which ultimately led to your OTH characterization of service. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you did not submit any medical evidence to support your claim. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits or enhancing educational or employment opportunities.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

10/24/2024

