



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

█  
Docket No. 8173-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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.

A three-member panel of the Board, sitting in executive session, considered your application on 7 November 2024. The names and votes of the members of the panel 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 Under Secretary of Defense for Personnel and Readiness Memorandum (Kurta Memo) and the 25 July 2018 Under Secretary of Defense for Personnel and Readiness Memorandum (Wilkie Memo).

A review of your record shows that you enlisted in the Navy and began active duty on 19 April 2004. On 10 December 2004, you underwent a summary court martial for two specifications of unauthorized absence and wrongful use of a controlled substance. Consequently, your commanding officer initiated administrative separation processing by reason of misconduct and recommended an Other than Honorable characterization of service. You were discharged on 28 February 2005, with the Other than Honorable characterization and a narrative reason for separation of misconduct.

In 2015, you petitioned the Board requesting an upgrade to your characterization of service and a medical discharge claiming that your command denied you a proper medical evaluation prior to discharge proceedings. The Board denied this request noting you waived your procedural rights regarding your administrative separation, forfeiting your opportunity to request a better characterization of service. In 2017 you petitioned the Board again, requesting a disability discharge based on the Navy's decision to allow you to enlist in 2004 despite a documented pre-service head injury of April 2002. You argued this head injury was aggravated during active-

duty training and should have triggered a medical board referral. The Board found no evidence you suffered from brain damage that created an occupational impairment while you were on active duty that required referral to a medical board. The Board noted your entrance physical showed you did not suffer any head fractures from your accident and that you were released from the hospital after a CT scan determined you were medically cleared for release. Finally, the Board noted you were able to complete basic training and during the training there was a lack of evidence of occupational impairment due to any disability condition.

For this petition you continue to claim that your medical history was not properly reviewed and that your command denied you proper medical evaluation prior to the discharge proceedings. As evidence for this petition, you submitted the results of your Freedom of Information/Privacy Act request.

The Board carefully considered your arguments but was unable to find that your new evidence supported your requested relief. The Board considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you deserve a medical discharge. The Board affirmed the prior Boards' decisions and found the Navy properly processed you for misconduct based on your court-martial conviction, and you were properly issued a characterization of service appropriate for the misconduct. In addition, the Board did not find any evidence, and you did not furnish any, demonstrating that you were not mentally responsible for your misconduct. Finally, even in light of the Wilkie Memo, and reviewing the record holistically, the Board found your misconduct outweighed any mitigating factors and determined there was no error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity.

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,

12/17/2024

