



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

■  
Docket No: 8059-21  
Ref: Signature Date



Dear ■:

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 limitations 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 22 June 2022. 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 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 an advisory opinion (AO) from a qualified mental health professional dated 27 April 2022, which was previously provided to you.

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 entered active duty with the Marine Corps on 3 November 1991. On 2 June 1993, you stated on your pre-enlistment drug abuse screening form that you last used marijuana in May 1993. However, on 8 November 1993, you tested positive for marijuana after arriving to basic training. Additionally, on 22 November 1993, you received non-judicial punishment (NJP) for disrespectful in language to a non-commissioned officer.

Subsequently, you were notified of pending administrative separation action by reason of fraudulent enlistment. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of fraudulent enlistment due to pre-service drug use with an uncharacterized characterization of service. The SA approved the recommendation, and on 29 November 1993, you were so discharged.

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 discharge and contentions that you incurred a PTSD during military service, your PTSD contributed to your misconduct, and you were discharged after telling your drill instructor you were reconsidering serving in the Marine Corps. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 27 April 2022. The AO stated in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence in support of his claims and as his separation was due to preservice behavior, it is not possible to attribute it to a mental health condition. Additional records (e.g., medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your failure to disclose your pre-service continued drug use and NJP, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found no evidence to support your contentions. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating Department of Veterans Affairs benefits, or enhancing educational or employment opportunities. Finally, the Board considered that you were assigned an uncharacterized entry level separation despite being processed for fraudulent enlistment and having committed an offense that qualified as a serious offense; conditions that qualified you for an Other Than Honorable characterization of service. Based on this fact, the Board determined you already received a large measure of clemency and mitigation of your misconduct from the Marine Corps as part of your separation. As a result, the Board concluded your conduct was a significant departure from that expected from a Marine and your assigned uncharacterized discharge remains appropriate. After applying liberal consideration, the Board did not find evidence of an

error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined 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,

7/2/2022

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Executive Director

Signed by: █