



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

██████████  
██████████ No. 6001-22  
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 2 December 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider dated 17 October 2022. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you did not 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 Marine Corps on 24 March 2003. As part of your enlistment application, on 3 January 2003 you signed and acknowledged the "Statement of Understanding Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination on 9

January 2003 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 22 October 2004 you received non-judicial punishment (NJP) for failing to obey a lawful order and for insubordinate conduct. You did not appeal your NJP. On 31 December 2004 your command issued you a “Page 11” counseling warning (6105) for underage drinking. The counseling expressly warned you a failure to take corrective action may result in administrative separation or limitation on further service. You did not submit a rebuttal statement to the counseling.

On 28 March 2005 you received NJP for failing to obey a lawful order, and for the wrongful use of a controlled substance (ecstasy). You did not appeal your NJP. On 29 March 2005 your command issued you a 6105 counseling documenting your misconduct, and a second counseling where you acknowledged you were being recommended for administrative separation. You elected not to submit a rebuttal statements to either counseling entries.

On 7 April 2005 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. The command’s basis for this recommendation was your unlawful use of methylenedioxymethamphetamine (MDMA, aka “ecstasy”). You waived your rights to consult with counsel, to submit a rebuttal statement, and to request a hearing before an administrative separation board. Ultimately, on 11 May 2005 you were discharged from the Navy for misconduct with an under other than honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code. On 14 February 2008 (decision letter dated 29 February 2008) the Naval Discharge Review Board denied your initial discharge upgrade application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 17 October 2022. The Ph.D. initially observed that there was no evidence of a mental health diagnosis on active duty, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Ph.D. noted that you did not provide any medical evidence to support your claims, and determined that your personal statement was not sufficiently detailed to establish a clinical diagnosis or provide a nexus with your misconduct. The Ph.D. concluded by opining that there was insufficient evidence of a service-connected mental health condition, and insufficient evidence that your misconduct could be attributed to a mental health condition.

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: (a) you never tested positive on a urinalysis, (b) you testified against other Marines that were selling drugs, (c) you hope to upgrade your discharge so you can access the Department of Veterans Affairs (VA) for service-related disabilities, and (d) you made mistakes in the military at age 20 that continue to follow you into your late 30’s. However, based upon this review and given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concurred with the AO and concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 17 August 2022 to specifically provide additional documentary material. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. The Board also 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.

The Board noted that while you may not have tested positive on any urinalysis tests, you admitted to Naval Criminal Investigative Service (NCIS) in a voluntary statement that you purchased and used ecstasy on multiple occasions. You indicated to NCIS that you purchased the ecstasy each time from a fellow Marine.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Lastly, the Board determined that illegal drug use by a Marine is contrary to Marine Corps' core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge.

