



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

█  
Docket No. 0533-24  
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 26 August 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, 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). 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 Marine Corps and commenced active duty on 15 April 1992, after disclosing pre-service marijuana use. On 11 February 1993, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. Specifically, you were counseled for being jailed by civilian authorities for causing \$4,000 damage to a police

car, for being late to formation, and for failing two inspections. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. However, on 25 March 1993, you commenced a four-day period of unauthorized absence (UA) that ended on 29 March 1993. On 16 April 1993, you received non-judicial punishment (NJP) for two specifications of UA, from 23 to 29 March 1993 and from 0800 to 1730 on 3 April 1993.

From 30 April 1993 to 25 June 1993 and from 27 August 1994 to 30 September 1994, you participated in migrant interdiction operations in █, █.

On 1 February 1995, your command received notification of your positive urinalysis testing for tetrahydrocannabinol (THC). On 5 February 1995, a medical officer determined you were a drug abuser, should be held strictly accountable for your actions, and should be administratively separated. On 17 February 1995, you received NJP for wrongful use of marijuana. On 14 March 1995, you received NJP for failure to go to restricted muster, making a false official statement, and breaking restriction.

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. You elected to consult with legal counsel and waived your rights to submit a statement or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 20 June 1995.

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 were young, made one bad decision, and tried THC. You also claim that you suffered from undiagnosed PTSD due to two tours in Cuba, were told your discharge would be upgraded after one year, and you have raised a family, had a successful career, and have not been in any trouble since the incident. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters. The Board further noted that you referred to attachments in your application but did not provide any supporting documentation with your package and did not respond to the Board's 18 January 2024 letter requesting additional documentation.

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 July 2024. The AO stated in pertinent part:

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

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. He did not submit any medical evidence in support of his claim. His statement is not sufficiently detailed to provide a nexus with his misconduct.

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 NJPs and civilian offense, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board further noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for misconduct due to drug abuse. The Board also observed that your civilian offense and two instances of UA occurred prior to your time in █

Additionally, there is no precedent within this Board’s review, for minimizing the “one-time” isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, the Board noted your record of misconduct also included a civilian offense, three instances of UA, breaking restriction, and a false official statement. The Board further noted that you disclosed pre-service marijuana use. Therefore, the Board was not persuaded by your argument that you made only one mistake and “tried THC.”

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 provided no medical evidence in support of your claim. Finally, 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 period of time.

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. 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. 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,

9/12/2024

