



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

█  
Docket No. 2505-24  
Ref: Signature Date

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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 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 23 October 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 the 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 21 April 1999. On 24 July 2000, you were issued an administrative remarks (Page 11) counseling concerning your lack of respect, being untruthful, and inability to be at your appointed place of duty. On 9 October 2000, you were issued an administrative remarks (Page 11) counseling concerning your failure to pass the semiannual physical fitness test. On 5 February 2001, you were issued an administrative remarks (Page 11) counseling concerning driving on board █  
█ without a valid state driver's license. On 3 May 2001, you received non-judicial

punishment (NJP) for wrongful use of a controlled substance. On 13 July 2001, you were issued an administrative remarks (Page 11) counseling concerning your inability to report to your appointed place of duty. On 30 July 2001, you received your second NJP for wrongful use of a controlled substance. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You consulted with counsel and waived your right to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The separation authority accepted the recommendation and, on 10 August 2001, 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 character of service and contentions that you were abused as a child and your military service aggravated your PTSD. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you content that a mental health condition impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted outpatient psychiatric records from Psychology Associates of NWLA where he was seen from February to October 2022. He was diagnosed with Major Depressive Disorder, Single Episode, Unspecified. He submitted three character references and one letter indicating completion of a drug abuse program in 2002. 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 submitted evidence of a post-service diagnosis of Major Depressive Disorder; however, the specifier was noted as "Single Episode," which presumes that the symptoms only recently began to appear. Had the psychologist noted previous historical evidence of Major Depression, it would have been denoted as "Recurrent." His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service diagnosis of Major Depressive Disorder that is temporally remote to 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concluded your misconduct showed a complete disregard for military authority and regulations. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. While the Board considered your post-service diagnosis of Major Depressive Disorder, the Board also observed that your condition was documented as a “Single Episode,” which presumes that your symptoms only recently began to appear. 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.

As a result, the Board determined 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 and commends you for your post-discharge accomplishments, 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,

11/17/2024

