



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

██████████  
Docket No. 5399-24  
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 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 4 December 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)/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 18 September 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 8 November 2002. On 12 June 2003, you were formerly counseled on your failure to obey an order or regulation. On 23 June 2004, you were formerly counseled on absence from appointed place of duty. On 10 February 2005, you tested positive for marijuana. On 15 March 2005, you received a Drug and Alcohol Dependency Screening, which diagnosed you as alcohol dependent and drug abuse. On 13 April 2005, a summary court-martial (SCM) convicted you of wrongful use of marijuana. Consequently, you were notified of pending administrative separation action by reason of misconduct due to drug

abuse. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation, and you were so discharged on 1 July 2005.

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 upgrade your discharge in order to receive disability benefits and contentions that you incurred PTSD or a mental health condition during military service. You further contend your peers and superiors subjected you to hazing, you are currently married with two children, and you volunteer for the community. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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

The Petitioner submitted active duty medical note dated June 2005 that indicates a diagnosis of Depression. He submitted VA compensation and pension rating dated October 2023 noting 70% service connection for PTSD.

His statement is not sufficiently detailed to provide a nexus with his misconduct. Furthermore, there are no additional VA documents pertaining to the rationale for his service-connected PTSD. Presumably, the Petitioner has access to his active duty medical records as he submitted one record that notes a diagnosis of Depression. Unfortunately, there are no medical records contained within his available service file to review. Additional records (e.g., active duty 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 mental health condition. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug related 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 concurred with the AO that there is insufficient evidence your misconduct could be attributed a mental health condition. As explained in the AO, you appear to have access to your active duty medical records since you submitted one record that notes a diagnosis of Depression from June 2005. However, since there are no medical records contained within your available service file to review, there is insufficient

evidence that you exhibited any symptoms of a mental health condition. The Board agreed that your statement is not sufficiently detailed to provide a nexus with your misconduct. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contention that you were hazed by your peers and superiors. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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. While the Board carefully considered the documentation 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,

1/6/2025

