



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

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Docket No. 5406-24  
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 30 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 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, 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.

During your enlistment processing you disclosed prior marijuana use and were granted an enlistment waiver. You enlisted in the U.S. Marine Corps and began a period of active duty on

19 July 2005. On 19 December 2008, you were counseled regarding your arrest by civilian authorities and incarceration for suspected illegal drug activity. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse and commission of a serious offense. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service adding, “[Petitioner] was apprehended by local police at a residence that contained over 84 grams of marijuana, much of which was individually packaged as if for resale. Additionally, cell phone text messages containing the sale of narcotics were recovered by the investigators.” The SA directed your OTH discharge from the Marine Corps by reason of misconduct due to drug abuse and, on 8 April 2009, 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) you incurred PTSD from serving two deployments where you witnessed lots of traumatic deaths, (2) after the deployments, soldiers who lived with you made poor decisions and since the apartment lease was in your name you received the same punishment as they did, (3) this prevented you from receiving the support you needed upon returning from deployment, (4) post-discharge, you have experienced a failed marriage and continue to struggle with daily life, (5) recently, you felt overwhelmed by the haunting memories experienced during your service and considered ending your life, (6) you were uncertain of how to seek help but your brother-in-law intervened by contacting the VA, where you learned about the VA hotline, and (7) as a father, you are determined to avoid becoming part of the “22 a day” statistic. 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 contentions and the available records and provided the Board with an AO on 13 September 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, he has received a diagnosis of PTSD from civilian providers. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given conflicting statements regarding whether or not he actually engaged in the misconduct or was a victim of circumstance. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service. There is insufficient [evidence] to attribute his misconduct to PTSD.”

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 arrest by civilian authorities for illegal drug activity, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely discrediting effect your arrest had on the Marine Corps. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, your post-service diagnosis of PTSD is temporally remote to your military service. 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 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 evidence you submitted in mitigation, 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 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,

11/20/2024

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Executive Director

Signed by: █