



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

██████████  
Docket No. 6055-24  
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 20 November 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; which was considered favorable to you.

You enlisted in the U.S. Marine Corps and began a period of active duty on 10 August 1999. On 15 August 2001, you received non-judicial punishment (NJP) for being absent from your appointed place of duty and failure to obey established liberty regulations by failing to maintain contact with your liberty buddy. On 21 November 2001, you began a period of unauthorized absence that ended with your apprehension on 4 December 2001. On 18 December 2001, you received your second NJP for 13 days of UA. On 29 December 2001, you began another period of UA that ended with your apprehension on 18 December 2003; a period of 719 days. On

8 May 2004, you tested positive for marijuana and cocaine. You began another period of UA on 1 June 2004 that ended after a period of 22 days.

On 27 September 2004, you were convicted by a special court-martial (SPCM) for 719 days UA, 22 days UA, wrongful use of marijuana, and wrongful use of cocaine. You were sentenced to confinement, reduction in rank, forfeiture of pay, and a Bad Conduct Discharge (BCD). After completion all levels of review, you were discharged with a BCD on 23 May 2007.

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 for a discharge upgrade and contention that the correction should be made because of your schizoaffective disorder and the passage of time. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO. The Ph.D. stated in pertinent part:

There is evidence that the Petitioner was diagnosed with a mental health condition during his military service as evidenced by the fact that he was prescribed Geodon – an antipsychotic medication. There are no medical records as contained within his available service record, however administrative documents do note symptoms and behaviors of a mental health condition while in service, e.g., paranoia, delusional thinking, and auditory hallucinations. It is possible that some of these symptoms could have been worsened by substance use, however notes of the symptoms precede positive urinalysis.

The Ph.D. concluded, “it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Notwithstanding the AO, the Board determined that the severity of your misconduct outweighed the mitigation offered by your mental health condition. Further, the Board noted you admitted that you were not taking Geodon as prescribed because it made you tired. Additionally, the Board noted you made a statement acknowledging it was illegal to use marijuana and cocaine, but you still did it because you wanted to try it.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a BCD. 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,

12/17/2024

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Executive Director

Signed by: █