



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

██████████  
Docket No. 6400-24  
Ref: Signature Date

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████████████████████

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 6 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 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a response to the AO, you chose not to do so.

You enlisted in the Marine Corps with a pre-service history of marijuana use, alcohol use resulting in adverse action, arrest for criminal trespass and assault, and frequent traffic offenses, and began a period of active duty on 12 December 1991. During September 1992, you received administrative counseling twice; first for your need to correct your lack of maturity, irresponsibility and poor judgment, and later for an alcohol-related incident due to allowing Marines under the legal drinking age to drink in your quarters. On 3 March 1993, you accepted nonjudicial punishment (NJP) for a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to wrongful use of a controlled substance, marijuana, following a positive urinalysis. As a result, your command referred you for substance abuse screening, which noted

impressions of drug abuse and alcohol dependence, although you did not disclose in-service use of controlled substances and were noted to have appeared honest. At that time, you stated that you had been on multiple medications due to your back injury and felt that those medications had caused you to have a positive urinalysis result. You received a second NJP, on 27 August 1993, for two additional specifications under Article 112a after being stopped going through the installation gate and being found to have marijuana in your possession as well as an additional positive urinalysis test. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and you elected to waive your right to consult counsel and a hearing before and administrative separation board. The recommendation for your discharge under Other Than Honorable (OTH) conditions was approved, on 23 November 1993, after considering statements which you had submitted in rebuttal to your discharge and characterization. You were so discharged on 9 December 1993.

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, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge, change your narrative reason for separation and separation code to reflect "medical," and to change your reentry code. You contention that your marijuana use was a mistaken attempt to self-medicate your severe back injury; you provide a detailed personal declaration addressing specific details of your affliction and efforts to alleviate your chronic pain in addition to the stress, depression, and anxiety you experienced due to your injury and its impact on your ability to work. You also state that you receive only medical care from the Department of Veterans Affairs (VA) and are seeking an upgrade for the purpose of compensation benefits. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you also contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred and properly evaluated on multiple occasions during his military service. There is in-service evidence that he was diagnosed with a mental health condition that was attributed to the medical and personal stressors he was experiencing at the time. There is no evidence of a diagnosis of PTSD.

Temporally remote to his military service, a VA-affiliated clinician has considered that his misconduct was related to his mental health concerns. Unfortunately, available records do not establish a nexus with his misconduct. More weight has been given to the service record over the post-service clinical opinion.

Petitioner had a history of problematic alcohol use prior to his military service that appears to have continued in service. It is difficult to attribute providing alcohol to minors to symptoms of a mental health condition.

While there is evidence that his back pain preceded his positive marijuana result, it is difficult to attribute his marijuana usage to self-medication, given evidence that his mental health concerns onset following the stressors that occurred subsequent to his misconduct, as well as his in-service denials of marijuana usage. 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 in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient 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, 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. Further, your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Additionally, the Board concurred with the clinical conclusion that, although there is in-service evidence of a mental health condition that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, available records do not establish a nexus with your misconduct and more weight has been given to the service record over the post-service clinical opinion. 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. 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.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

1/8/2025

