



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

██████████  
Docket No. 6494-24  
Ref: Signature Date

██████████  
██████████  
████████████████████  
██████████

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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 25 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 and your response to the AO.

You previously applied to this Board for a discharge upgrade and were denied on 3 February 2023. The facts of your case remain substantially unchanged.

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 change your discharge characterization of service, narrative reason for separation, and separation and reenlistment codes. You contend that after receiving your first BCNR denial, you requested your complete military file and found additional medical records you believe are relevant to your current

application. You contend these records corroborate that you were suffering from depression during your time in service and, although you did not fully understand it at the time and did not seek treatment until after you left the service, you believe your mental health condition mitigates your misconduct. You further contend the new medical records corroborate that you were also in severe pain while in service due to physical injuries. For purposes of clemency and equity consideration, the Board noted the documentation you provided, including your letter to the Board, documents from your prior application, including multiple advocacy letters, and various service record documents.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 2 October 2024, which was previously provided to you. The AO noted 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, the VA has granted service connection for a mental health condition. It is possible that he may have been experiencing unrecognized symptoms of depression during service, given his physical injury and limitations. Unfortunately, there are inconsistencies regarding his purported use of marijuana in service that make it difficult to determine the Petitioner's candor and attribute his misconduct to a mental health condition.

The AO concluded: "It is my clinical opinion that there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you submitted additional supporting documentation that provided additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 positive urinalysis for marijuana, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. 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. The Board additionally agreed with the AO finding that, although there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition.

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 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, \_\_\_\_\_

12/30/2024

