



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. 6684-24
Ref: Signature Date

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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 9 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 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) (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 most recently applied to this Board for a discharge upgrade and were denied on 29 January 2020. 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 for a discharge upgrade and change your narrative reason for separation to Secretarial Authority or Miscellaneous. You contend that

your records demonstrate you suffered a debilitating and traumatic physical injury while in service and subsequently suffered harassment and physical punishment from your fellow Marines. You further contend these events caused you to experience severe mental anguish and that liberal consideration of your record will show that you have PTSD. Lastly, you contend that DoD guidance in these circumstances warrant mitigation of the misconduct underlying your discharge, and that equity also support the relief you request. For purposes of clemency and equity consideration, the Board considered the documents you provided in support of your application, including your legal brief with exhibits.

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 28 August 2024, which was previously provided to you. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He submitted evidence of post-service diagnoses of PTSD and Major Depressive Disorder with Psychotic Features that are temporally remote to service. His statement is inconsistent with his anecdote of what occurred during the 2011 VA Appeals Aboard. It is possible that singular periods of UA and marijuana use could be symptoms of PTSD, repetitive offenses thereof as well as failure to obey lawful orders are not typical symptoms of someone suffering from PTSD.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of temporally remote post-service mental health conditions. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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

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 four non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the repeated nature 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board noted that you were given the opportunity to address your conduct issues but you continued to commit misconduct; which led to your unfavorable discharge. Lastly, the Board concurred with the AO in finding that, although sufficient evidence exists of a post-service mental health condition remote in time from your military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, there was no evidence that you were diagnosed with a mental health condition while in service or that you exhibited any

symptoms of a mental health condition, and, although it is possible that singular period of UA and marijuana use could be symptoms of PTSD, repetitive offense as well as failure to obey lawful orders are not typical symptoms of someone suffering from PTSD. 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 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,

1/7/2025

