



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

██████████
Docket No. 7565-24
Ref: Signature Date

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

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 February 2025, has carefully examined your current request. 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 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) of a qualified mental health provider and your response to the AO.

You previously applied to this Board contending that you suffered from a mental health condition during your military service which you believe mitigated your misconduct. The Board requested a mental health AO, which was considered unfavorable to your contentions. It advised that the preponderance of objective evidence failed to establish a diagnosis of a mental health condition or that you suffered from a mental health condition at the time of your military service such that your misconduct might have been mitigated by such mental health condition. Of significant note, your evidence at that time included a statement to the Department of Veterans Affairs (VA) at the time you sought a character of discharge determination for VA purposes. In your statement, you denied that your drug abuse misconduct had been for the purpose of self-

medication; instead, you claimed that your prescription medications had caused you to not be “cognizant” of the consumption of other drugs. You elaborated upon the likely source of your positive urinalysis; stating that you had taken a 4-hour road trip to ██████████, with your brother and several of his friends who “partook in smoking a superabundant amount of marijuana with the windows closed the entire 4 hour trip” and whereas you were present but “did not partake.” You further contended that you had not been permitted to consult counsel and had not been cognizant of waiving your rights during separation processing; notwithstanding that your acknowledgment of rights and waiver was signed by both you and a witness and included a hand-written entry with the name of the defense legal counsel whom you indicated having consulted. The Board denied relief on 10 September 2021. The facts of your case remain substantially unchanged.

You now seek reconsideration of your mental health contentions. 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 to “Honorable” and change your narrative reason for separation to “Secretarial Authority.” You contend that you were in good mental and physical health prior to joining the Marine Corps, you performed well during your deployment to “██████,” you experienced stress during your deployment, especially experiencing fear of potential attacks against the operational base or against convoys, and this took a toll on your mental health. You now attribute your misconduct to self-medication of the physical and emotional pain you experienced following a significant back injury which occurred due to repeated lifting of heavy ammunition, which resulted in over-prescription of strong opioids and resulted in your being placed on limited duty and receiving a medical evaluation board. You believe that your situation and its consequences would have been different if you had never been injured but that you otherwise performed honorably as a Marine during your service and that you have been an excellent representative of the Marine Corps since your discharge. In support of your contentions and for the purpose of clemency and equity consideration, you submitted a personal statement, records from your official military personnel file, five character letters, and service health records that included the medical board report, pain clinic records, and post-deployment health assessments.

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

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is insufficient evidence 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 arguments in support of your application. 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 NJPs, 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. Further, the Board concurred with the clinical opinion that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your drug abuse misconduct to a mental health condition. In this regard, the Board particularly noted that you previously denied any intentional ingestion of marijuana in your statement to the VA and now describe having self-medicated due to mental health concerns and physical pain. The Board found the discrepancies in the various renditions you have provided over time in applications to the VA, NDRB, and the Board indicative of a general lack of candor which negated otherwise favorable clemency factors such as the severity of your misconduct and your post-discharge character. Additionally, the Board observed that you provided no medical evidence in support of your claim.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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 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,

3/6/2025

