



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

701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

ARLINGTON, VA 22204-2490

Docket No. 7635-24  
Ref: Signature Date

Ref: Signature Date

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 5 February 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 this 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 21 June 2006. As part of your enlistment application, on 3 February 2006, you acknowledged and signed the “Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs.” You participated in [REDACTED] from 8 March 2007 to 18 September 2007. On 18 January 2008, Navy

Drug Laboratory, ■, reported that your urine sample tested positive for THC (marijuana). On 31 January 2008, you received non-judicial punishment (NJP) for wrongful use of marijuana. As punishment, you were awarded reduction in rank to E-2, forfeiture of pay, 45 days restriction, and 45 days extra duties. You did not appeal your NJP. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You elected your procedural right to consult with counsel but waived your right to present your case to an administrative discharge board. On 15 February 2008, you formally refused in writing screening and treatment for substance abuse offered to you by the Marine Corps. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] displayed a smug, unremorseful attitude and expressed no desire to continue to serve. He acknowledged he would rather receive an Other Than Honorable discharge now than have an opportunity to continue to serve. Furthermore, he admitted to using marijuana approximately 2000 times before joining the Marine Corps, confirming his total unsuitability for further service.

The separation authority approved the recommendation for your administrative discharge and you were so discharged on 17 April 2008.

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 upgrade your discharge character of service and reinstate your pay and allowances. You contend that: (1) during your participation in ■, you suffered significant trauma, (2) you answered no to many of the questions on your Post-Deployment Health Reassessment because you were coached to do so for fear of being reassigned to another unit and, therefore, forfeiting the close personal relationships that was forged in combat, (3) you were suffering, and continue to suffer, from the symptoms related to PTSD for which you have been diagnosed, (4) since your discharge, you have struggled to maintain steady employment, and (5) because of the injuries that you sustained while deployed, your cognitive skills deprive you of the ability to care for yourself without adult supervision. You assert that you recognize your addiction to drugs and alcohol abuse, that your negative self-esteem and frequent depression holds you back from being consistent and productive adult, and your ability to socialize with family and friends is suffocated by your mental health issues. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 15 December 2024. 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. His record does indicate a combat deployment, so it is possible that the Petitioner experienced

PTSD symptoms; however, given his admission to extensive pre-service drug use in conjunction with a documented lack of remorse and no intention of ceasing drug use, it is more likely that his misconduct was due to marijuana dependence rather than to PTSD. 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."

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 your NJP, 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. Additionally, 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 effect your misconduct had on the good order and discipline of your unit. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your request. Further, the Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Furthermore, while it is possible that you experienced PTSD symptoms, given your admission to extensive pre-service drug use in conjunction with a documented lack of remorse and no intention of ceasing drug use, the Board determined, it is more likely than not, that your in-service drug abuse was due to marijuana dependence rather than to 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 otherwise not be held accountable for your actions. Finally, the Board discerned no impropriety or inequity in your awarded punishment received at NJP.

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 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,

3/5/2025

