



**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. 7854-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 22 January 2025. 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 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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 4 June 2001. On 18 February 2001, you were issued an administrative remarks (Page 11) counseling for being in an unauthorized absence status resulting in your removal from rifle range detail. On 10 March 2004, you were issued an administrative remarks (Page 11) counseling concerning being in an unauthorized absence status, disobeying a lawful order by drinking and driving, and receiving a DUI. On 3 August 2004, you were issued an administrative remarks (Page 11) counseling

concerning your lack of financial responsibility by not honoring your spousal support obligation. On 16 November 2004, you were convicted by a special court-martial (SPCM) for two specifications of unauthorized absence, two specifications of wrongful use of marijuana, and an orders violation. As part of your sentence, you were issued a Bad Conduct Discharge (BCD). After completion of all levels of review, you were so discharged on 12 July 2006.

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 contentions that: (1) you had a total of two deployments to Iraq and getting ready for a third deployment when you got in trouble, (2) feel like the issues were direct result of undiagnosed PTSD, (3) you were seen by a mental health doctor when you got out, (4) prior to joining the Marine Corps you were at the top of your class in high school, (5) you were a model Marine, and problems began after your second deployment when you hung out with the wrong people, (6) you thought you were dying of a stomach ulcer, (7) the person that raised you back home died, and you requested to go on leave, (8) you bought a plane ticket and went to go pick up your leave papers but they were not there, (9) your chain of command had approved you to go on leave, so you left and went to the funeral, (10) both of your parents were drug users and played no role in raising you, (11) your chain of command contacted you and told you to get back as soon as possible, (12) you were apprehended on your return and taken to an SPCM, (13) you've tried to better myself when you got out, and (14) you are seeking Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that PTSD impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given UA and marijuana use prior to his deployment. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is sufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO conclusion was changed to state, "There is some post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service."

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 SPCM and counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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 concluded your misconduct showed a complete disregard for military authority and regulations. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service, but you continued to commit additional misconduct; which led to your BCD. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As explained in the AO, there is no evidence that you were diagnosed with PTSD while in military service or that you exhibited any symptoms of a 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 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 and commends you for your post-discharge efforts at rehabilitation, 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,

3/7/2025

