



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. 8496-24
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 3 March 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 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 (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 enlisted in the Marine Corps and commenced active duty on 16 September 2002. Prior to enlisting, you signed a Statement of Understanding of the U.S. Marine Corps Policy Concerning the Illegal Use of Drugs. On 11 February 2005, you pleaded guilty and were convicted at Special Court-Martial (SPCM) of violating Article 112a of the Uniform Code of Military Justice for wrongful use of marijuana. You were sentenced to 30 days of confinement, reduction to paygrade E1, forfeiture of \$700 pay per month for one month, and a Bad Conduct Discharge (BCD). On 19 October 2005, the Navy and Marine Corps Court of Criminal Appeals affirmed the findings and sentence of your case. On 15 May 2006, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 19 March 2015, your request was denied based on the determination your discharge was proper as issued.

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 Memo. These included, but were not limited to, your desire to upgrade your discharge characterization and change your narrative reason for separation to Secretarial Authority. You contend that your discharge, which occurred 20 years ago, was the direct result of trauma inflicted on you during your military service. For purposes of clemency and equity consideration, the Board considered the materials you provided in support of your application; including a 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 18 January 2025. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during her military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. There is post-service evidence of a diagnosis of PTSD through VA compensation and pension evaluation. The Petitioner submitted what appeared to be a partial Disability and Benefits Questionnaire (DBQ) that would have accompanied the VA assessment. The document notes review of medical records to include Vet Center records. These would be very helpful to review. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence to attribute her misconduct to a mental health condition."

In response to the AO, you supplied additional evidence in support of your case. After a review of 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 your SPCM, 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. Additionally, the Board concurred with the AO and determined that, although there is evidence of your post-service diagnosis of PTSD, there is insufficient evidence to attribute your misconduct to a mental

health condition. The Board agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. The Board further agreed, that if you were able to provide your VA assessment, which appeared incomplete in your application, "these would be very helpful to review," and may aid in rendering an alternate outcome.

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 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. For example, new matters could include submission of your complete VA assessment. Additionally, in any future application, 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,

3/24/2025