



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

██████████  
Docket No. 8625-24  
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 11 April 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 7 May 1990. On 23 February 1990, you acknowledged and signed the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." As part of your enlistment application, you disclosed pre-service marijuana usage; which required a drug waiver for you to enlist. Your pre-enlistment physical examination, on 24 February 1990, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 22 October 1990, your command issued you a “Page 11” counseling sheet (Page 11) documenting you being counseled for losing your meal card and military ID card. The Page 11 advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not elect to submit a Page 11 rebuttal statement.

On 18 June 1991, you received non-judicial punishment (NJP) for the wrongful use of multiple controlled substances; namely amphetamine/methamphetamine and marijuana. You did not appeal your NJP.

On 12 February 1992, you received NJP for the larceny of one (1) complete set of marked utilities and several packs of cigarettes from a fellow Marine’s wall locker. You did not appeal your NJP.

On 24 February 1992, you were issued a Page 11 documenting an off-base alcohol-related incident involving a DUI in the city of ██████████ where you were arrested driving with a BAC of 0.12. You elected not to submit a Page 11 rebuttal statement.

On 3 March 1992, you underwent a Medical Officer (MO) evaluation. The MO determined that you were not dependent on alcohol or drugs, were not suffering from any psychosis, and did not require any hospitalization.

On 18 August 1992, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and drug abuse. You consulted with counsel and elected your right to request a hearing before an administrative separation board.

On 26 August 1992, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. You specifically stated on your medical history that you were in “good health” and not taking any medications. On 24 September 1992, you elected in writing to waive your right to an administrative separation board.

The Staff Judge Advocate for the Separation Authority subsequently determined that your administrative separation proceedings were legally and factually sufficient. Ultimately, on 4 November 1992, you were separated from the Marine Corps for misconduct with an under Other Than Honorable (OTH) discharge characterization and were assigned an RE-4B reentry code.

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 to your reason for separation, separation code, and reentry code. You contend that: (a) your enlistment started with you experiencing two (2) traumatic events, (i) you were assaulted by your Drill Instructor in boot camp, causing you to suffer from neck and back pain, and (ii) during a deployment to ██████████, one service member died due to an accident in his working area, (b) you began to use alcohol and drugs to self-medicate your intense physical pain, leading to you making bad decisions and eventually being discharged, (c) to root of your misconduct was your reliance on alcohol and drugs to self-medicate, (d) you have been suffering from the traumatic

events and your physical injuries since leaving the Marine Corps, (e) under 10 U.S.C. § 1553 and the Hagel Memo your PTSD mitigates your misconduct, (f) while time alone does not warrant an upgrade, during the 30 years, you have been a productive member of society who has paid for your misdeeds and punishing you any longer serves no purpose, (g) post-service you have worked continuously, you eventually became a head electrician at a hospital, and only recently were you forced to retire due to injury, (h) you are active in your community, especially in the boating community, by volunteering and teaching kids and adult about boating in ██████████, (i) you are extremely sorry for your actions and take responsibility for your misconducts, and you regret your actions and wishes you could take them back, (j) you have continued to struggle post-service with your mental health, and you have PTSD and a sense of deep shame of your actions, and (k) it would be unjust for you to continue to be punished in life for your misconduct that occurred over 30 years ago and as a very young Marine; especially when it is attributed and is related to your mental and physical health issues. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 26 January 2025. As part of the Board's review, the Board 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 was diagnosed with Mixed Substance Abuse and Alcohol Abuse. It is possible that he suffered from PTSD symptoms and did not report any of the events during service that caused PTSD. However, some of his misconduct is not typically caused by PTSD, i.e., stealing and amphetamine use. His alcohol use and marijuana use could possibly have been used to suppress PTSD symptoms, although he entered service with a waiver for marijuana use, and thus it is difficult to state a nexus between marijuana specifically and his misconduct. He has provided evidence of post-service diagnoses of PTSD.

The Ph.D.'s AO concluded, "...it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions

mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative pattern of misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, and demonstrated you were unfit for further service. The Board also 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.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board also noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military.

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 in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge 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,

4/17/2025

