



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

██████████  
Docket No. 9585-24  
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 26 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 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. Although you were provided an opportunity to respond to the AO, 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 U.S. Marine Corps and began a period of active duty on 10 July 1979. On

24 January 1980, you received non-judicial punishment (NJP) for failure to obey a lawful order. For the months of May and June 1980, you were not recommended for promotion to lance corporal. On 11 June 1980, you received your second NJP for two days unauthorized absence (UA). In September 1980, you were not recommended for promotion due to substandard performance. Then, in September 1981, you were again not recommended for promotion due to substandard performance. On 30 November 1981, you lost your stepson.

For the month of February 1982, you were not recommended for promotion to corporal due to substandard performance as a Marine. On 26 February 1982, you received your third NJP for assault on another Marine. On 5 May 1982, you submitted a Humanitarian transfer request that was granted on 10 June 1982. On 8 December 1982, you were issued a counseling warning due to your record of misconduct and informed you would be supervised closely but given an opportunity to show your potential to be a productive Marine. On 13 December 1982, you received your fourth NJP for your failure to go to your appointed place of duty.

On 15 December 1982, you received your fifth NJP for wrongful use of marijuana. On 16 December 1982, you were seen by the depot psychologist, and you admitted to using marijuana daily for 10 years. In the last year, you averaged one joint per night; though you admitted it had been more in previous years. It was recommended you attend treatment, and on 27 December 1982, you stated a desire not to attend Department of Veterans Affairs treatment. You subsequently received two more NJP's for periods of UA for five days and two days. On 18 February 1983, you made a bomb threat stating you had a half a stick of dynamite. You subsequently started a period of UA that lasted for 31 days after you surrendered on 21 March 1983. Consequently, you were notified of administrative separation processing for minor disciplinary misconduct. After you waived your rights, the Commanding Officer made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and you were so discharged on 25 March 1983.

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 contentions you should have been given a General as you served three years and eight months of your contract, the charges were not of a misconduct nature, you were going through a mental breakdown due to the loss of you son, you were later charged with a minor infraction, and it resulted in OTH that you received four months prior to completion of your contract. For purposes of clemency and equity consideration, the Board noted you provided a statement from the Veteran Service Officer, police letter, OMPF documents, and a personal statement.

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 10 February 2025. The Ph.D. stated in pertinent part:

Although there is no evidence that the Petitioner was formally diagnosed with a mental health condition during his military service, staff at the Drug and Alcohol Center noted "substantial grief and mental discord." Had he been evaluated by a

licensed mental health clinician, he might have been diagnosed with Bereavement, Prolonged Grief Disorder, and/or Major Depressive Disorder. Two of his NJP's occurred prior to the death of his stepson and therefore cannot be said to have been mitigated by that event. However, although some misconduct was more serious than others were, it is possible that those infractions occurring after the death of his stepson (November 1981) were caused by significant symptoms of depression and grief. Profound grief, confusion, despair, anger etc., would be common following such a traumatic loss. 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 Ph.D. 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 sufficient evidence to attribute his misconduct after November 1981 to a mental health condition."

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included extensive drug abuse. 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. Further, the Board concurred with the AO that, although there is sufficient evidence to attribute your misconduct after November 1981 to a mental health condition, two of your NJP's occurred prior to the death of your stepson and therefore cannot be said to have been mitigated by that event. Therefore, the Board found that there was no nexus between your misconduct prior to November 1981<sup>1</sup> and a mental health condition.

Even if the Board assumed that your misconduct was attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board considered that you received seven NJPs and were not recommended for promotion to due substandard performance on multiple occasions. Furthermore, the Board considered your daily drug abuse that, by your admission, extended 10 years back from your positive urinalysis. Additionally, the Board also considered that you fraudulently enlisted into the Marine Corps by failing to truthfully disclose your daily drug abuse.

Moreover, the Board determined that an Honorable discharge is appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. Based on your extensive record of misconduct, the Board concluded your service did not meet that standard.

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

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<sup>1</sup> This included your two NJPs and daily marijuana use going back to your entry into the Marine Corps.

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.

The Board offers its deepest condolences for the loss of your stepson.

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,

4/7/2025

Executive Director

Signed by: