



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

Docket No. 9799-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 16 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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. 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 30 May 1989. On 15 May 1990, you received non-judicial punishment (NJP) for willfully disobeying a lawful order of a commissioned officer. From January 1991 to April 1991, you participated in Operation Desert Shield/Storm. On 3 August 1992, you were issued an administrative remarks (Page 11) counseling concerning your violation of regulations as evidenced by your NJP of 15 May 1990. The Page 11 expressly advised you that failure to correct your deficiencies, poor performance of duties or misconduct of any nature may result in punitive or administrative action to include involuntary separation from naval service.

On 9 September 1992, you submitted a written request for separation for separation in lieu of trial (SILT) by court-martial for wrongful use of marijuana. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be under Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service by reason of SILT. You were so discharged on 28 October 1992.

You previously applied to this Board for an upgrade to your characterization of service and were denied relief on 7 March 2012.

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 to Honorable and change your narrative reason for separation with the appropriate corresponding separation code. You contend that: (1) you suffered from post-traumatic stress disorder (PTSD) and cannabis use disorder which are service-connected conditions that you continue to struggle with, (2) your symptoms caused you to rely on the use of marijuana as a way of coping with your mental state, (3) because PTSD was not a commonly known condition at the time you were not afforded mental health treatment for your condition, (4) you faced constant racism, (5) your commanding officer referred to you with racist slurs and you were often denied opportunities to obtain additional training because of your race, (6) upon your return from deployment you experienced traumatic flashbacks, hypervigilance, anger, and depression, (7) you were experiencing PTSD symptoms and did not grasp the condition and knew nothing about any available mental health services, (8) you did your best to perform your duties, (9) you turned to marijuana to self-medicate your PTSD symptoms, (10) your assigned legal counsel falsely advised you that your discharge character of service would automatically upgrade to an Honorable discharge for as long as you did not get into trouble as a civilian for one year and that you would be entitled to veterans' benefits, and (11) the Department of Veterans Affairs (VA) found your PTSD with cannabis use disorder were service connected for treatment purposes only due to your negative discharge. 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 request and provided the Board with an AO on 24 February 2025. The AO noted 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 did not cite PTSD or any symptoms thereof as a rationale for his misconduct in the 2012 case. He has provided post-service evidence of a diagnosis of PTSD that is temporally remote to service. Furthermore, in one document submitted as evidence (January 2021), his description of what caused his PTSD does not meet criteria as per DSM-5-TR. Some of his misconduct occurred prior to his deployment to the Gulf, and thus cannot be said to have been caused by combat PTSD. 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 sufficient evidence of a post-service diagnosis of PTSD. 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 and SILT request, 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. Further, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Moreover, the Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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. Finally, the Board noted that you provided no evidence, other than those based on your statement, to substantiate your contention of mistreatment by the Marine Corps<sup>1</sup>.

The Board noted that there is no provision of law or Navy regulations that allows for recharacterization of service due solely to the passage of time, and VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active-duty service discharge characterizations.

---

<sup>1</sup> The Board noted that your contention of mistreatment seemingly contradicts your command's actions after your first incident of misconduct. Instead of processing you for administrative separation, your command counseled you on your misconduct, offered assistance through your chain of command, and allowed you to continue to serve in the unit. While the Board considered your chronology of events, it noted the record does not support certain aspects of it.

Furthermore, the Board concurred with the AO that, while there is sufficient evidence of a post-service diagnosis of PTSD, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, some of your misconduct occurred prior to your deployment and, thus, cannot be said to have been caused by combat PTSD. 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. 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, 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,

4/22/2025

