



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. 9956-24
Ref: Signature Date

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Dear █

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 31 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. 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 Marine Corps after disclosing pre-service marijuana use and commenced active duty on 16 July 2003. As part of your enlistment processing, you signed and acknowledged a statement of understanding of the Marine Corps policy concerning illegal use of drugs. On 4 April 2005, you received non-judicial punishment (NJP) for underage drinking and

providing alcohol to two underage Marines. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 11 May 2005, you received Page 11 counseling regarding your recent positive urinalysis for marijuana. You were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse and pattern of misconduct. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). On 7 June 2005, you received a substance abuse evaluation by a medical officer who determined you were not dependent and recommended administrative separation processing. In the meantime, you attended Alcohol Impact Class from 13 June 2005 to 16 June 2005. On 16 June 2005, you entered into a pre-trial agreement (PTA) to plead guilty to wrongful use of marijuana and waive your right to an ADB, in exchange for trial at summary court-martial (SCM) SCM vice special court-martial. On 13 July 2005, you pleaded guilty at SCM to wrongful use of marijuana and were sentenced to reduction in rank to E-1, forfeitures, and confinement. Pursuant to your PTA, you waived your right to an ADB and the separation authority directed your discharge with an OTH characterization of service. You were so discharged on 9 December 2005.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 10 August 2009, based on their determination that 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 Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you were discharged for smoking marijuana one time while on leave, you smoked marijuana to self-medicate, and that your undiagnosed PTSD and traumatic brain injury (TBI) should mitigate your marijuana use. For purposes of clemency and equity consideration, the Board considered your statement and the post-service medical records and neuropsychological evaluation you provided.

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 February 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted a psychological evaluation dated May 2020 noting diagnoses of PTSD and TBI. He submitted medical records from ■ Medical ■ (April 2024) noting diagnoses of Generalized Anxiety Disorder, Depression, PTD and TBI.

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. However, it is possible that he was suffering from PTSD symptoms in service and turned to marijuana as a means of coping, particularly given his statement regarding his kinetic combat deployment. Providing alcohol to underage Marines was likely not caused by PTSD symptoms. He submitted evidence of post-service treatment for depression, anxiety, PTSD and TBI.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a mental health condition that existed while in service. There is insufficient evidence to attribute all of 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 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. The Board also concurred with the AO that while there is sufficient evidence of a mental health condition that existed while in service, there is insufficient evidence to attribute all of your misconduct to a mental health condition. Additionally, there is no precedent within this Board’s review, for minimizing the “one-time” isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, the Board noted your record of misconduct also included providing alcohol to underage Marines. Therefore, the Board was not persuaded by your argument that you made only one mistake.

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,

4/15/2025

