



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

██████████
Docket No. 10435-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 21 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 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, 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

During your enlistment processing you disclosed marijuana use and a history of Adjustment Disorder with Disturbance Conduct; for which an enlistment waiver was granted. You initially enlisted in the U.S. Marine Corps and commenced a period of active duty on 9 September 1997. After a period of Honorable service, you were discharged on 19 November 2001. You subsequently enlisted in the Marine Corps Reserve and completed a period of active duty for training on 19 June 2003. You commenced a final period of active duty on 27 April 2005. On 1 July 2005, you signed the Marine Corps policy concerning the illegal use of drugs.

From January to September 2007, you were deployed to Iraq in support of the Global War on Terrorism. On 9 January 2008, you were convicted by a Special Court-Martial (SPCM) of the wrongful use of marijuana. You were sentenced to be confined for nine months, to be reduced in

rank to E-1, and to be reprimanded. In February 2008, you sought mental health treatment for issues related to depression. In June 2008, you declined to undergo a substance use disorder evaluation. On 21 April 2009, after consulting with defense counsel, you agreed to plead guilty at a Summary Court-Martial (SCM) to the wrongful use of marijuana and to waive your right to an administrative discharge board to preclude referral of the charges to a SPCM. On 1 May 2009, you were convicted by a SCM of the wrongful consumption of marijuana. You were sentenced to be confined for 21 days and to forfeit two-thirds of your monthly pay for one month. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps for drug abuse; at which time you elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. Ultimately, the Separation Authority (SA) directed you be discharged with an Other Than Honorable (OTH) characterization of service and you were so discharged on 9 October 2009.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 and your contentions that: (1) you were discharged as a result of mental health issues that arose during your active duty service, (2) you believe the characterization of your discharge was unjust as you were neither afforded the opportunity to seek mental health treatment nor referred for evaluation despite the nature of the charges brought against you, and (3) you respectfully request an upgrade which would not only improve your personal and professional prospects but also allow you to meaningfully contribute to the veterans community—a community you care deeply about but are currently unable to support due to restrictions associated with your discharge resulting in exclusion of VA-related opportunities. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have contributed to your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 13 February 2025. The AO stated in pertinent part:

During military service, the Petitioner was appropriately referred for psychological evaluation and received treatment for a mental health condition. While he denied symptoms of PTSD during military service, the VA has granted service connection for PTSD. It is possible that his in-service symptoms have been reconceptualized as PTSD over time with increased understanding. However, there are some inconsistencies in his report of his substance usage that raise doubt regarding his candor. These discrepancies seem more consistent with behavior associated with a substance use disorder rather than self-medication of symptoms of PTSD or depression. Additionally, the Petitioner had a history of marijuana use prior to military service. While it is possible that that Petitioner returned to marijuana use in the context of post-deployment stressors, it is difficult to attribute his misconduct solely to mental health symptoms, particularly given his denial of use following his first positive urinalysis.

The AO concluded, “it is my clinical opinion that there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is in-service evidence of a

mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition, such as Adjustment Disorder or Depression.”

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included drug offenses. 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 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Lastly, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition; such as Adjustment Disorder or Depression. As explained in the AO, your pre-service history of marijuana use coupled with your denial of use following your initial positive urinalysis makes it difficult to attribute your misconduct solely to mental health symptoms. Therefore, the Board determined that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

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 the 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 is attached 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,

4/29/2025