



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

██████████  
Docket No. 11299-24  
Ref: Signature Date

████████████████████  
████████████████  
████████████████

Dear ██████████

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 Board waived the statute of limitation 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 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 to 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps after being granted a waiver for pre-service drug use and began a period of active duty on 26 June 2002. After being verbally counseled multiple times on tardiness and improper grooming, on 23 April 2003, you were issued administrative counseling advising you to correct your deficiencies with respect to unauthorized absences (UA) from your appointed place of duty and for failure to obey orders and regulations pertaining to maintaining property grooming standards. Additionally, you were warned that failure to correct your

deficiencies could result in judicial or administrative action; to include administrative separation. Shortly thereafter, on 13 May 2003, you received nonjudicial punishment (NJP) for a violation of Article 92 of the Uniform Code of Military Justice (UCMJ) for failure to obey a direct order to shave given by a chief warrant officer. On 15 September 2003, you were again counseled for continued, repeated acts of misconduct, to include failure to obey orders given by superiors, disrespect toward a noncommissioned officer, and failure to be at your appointed place of duty. On 22 January 2004, you accepted a second NJP for violation of Article 92 of the UCMJ due to failure to obey an order or regulation on five separate dates. On 12 July 2004, you were administratively counseled after a controlled substance was found in your wall locker. Then, on 10 August 2004, the Naval Drug Laboratory reported your urinalysis screening test as positive for marijuana use.

Pending charges before Special Court-Martial (SPCM), you negotiated a pre-trial agreement to dispose of your drug-related misconduct in a lesser forum in return for an agreement to waive your right to a hearing before an administrative separation board. You were tried and convicted before Summary Court-Martial (SCM) on 24 September 2004 and, when you were notified on of processing for administrative separation by reason of misconduct due to drug abuse, you voluntarily waived your right to a hearing; consistent with the terms of your pre-trial agreement. The recommendation for your Other Than Honorable (OTH) discharge was forwarded to Commander, Marine Corps Air Bases ██████████ who approved the recommendation. At the time of your discharge on 22 December 2004, your proficiency and conduct marks did not meet the standard established by regulation for an Honorable characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge, change your narrative reason for separation, and change your separation code. You contend that you experienced mental health issues during your military service but were not afforded the necessary assistance from your chain of command in receiving care. You submitted evidence that you were granted a rating of 100 percent for service-connected disability from the Department of Veterans Affairs (VA), effective August 2016, for Bipolar Disorder. You claim that your actions during your military service were the result of your mental stated due to this disorder; which you assert resulted in your abuse of drugs as a means to process your mental and personal issues. You believe that your characterization should be reconsidered in light of the professional opinion expressed in connection with the VA's final decision. In support of your mental health contentions and for the purpose of clemency and equity consideration, you submitted copies of your rating decision with a personal statement addressing your diagnosis.

Because you contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder. There is no evidence that he was diagnosed with another mental health condition in military service. Temporally remote to his military service, the VA has granted service connection for another mental health condition. While VA clinicians consider that his misconduct may have been attributed to his in-service mental health concerns, it is difficult to attribute his misconduct solely to mental health

concerns given pre-service misconduct that appears to have continued in service. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "There is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities 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, 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 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. Finally, the Board concurred with the AO that, while there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your in-service misconduct solely to a mental health condition. As explained in the AO, it is difficult to attribute your misconduct solely to mental health concerns given your pre-service misconduct that appears to have continued in service. 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 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,

4/28/2025

