



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

██████████  
Docket No. 180-25  
Ref: Signature Date

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

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 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 18 July 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.

You enlisted in the Marine Corps and began a period of active duty on 6 July 1995. You were administratively counseled in March 1996 for offenses of driving under the influence of alcohol, drinking under the legal age, and speeding at 65 miles per hour in a 35 mile per hour speed limit zone. You received an additional administrative counseling warning, in July 1997, due to an unauthorized absence from remedial physical fitness training. On 23 October 1997, you accepted nonjudicial punishment (NJP) for violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to wrongful use of the controlled substance marijuana. You were subsequently notified of processing for administrative separation by reason of misconduct due to drug abuse and elected to voluntarily waive your right to a request a hearing before an

administrative separation board. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved and you were discharged on 20 March 1998. Your conduct average was 3.75.

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 and your contentions that you were severely depressed during your Marine Corps service due, in part, to your youth and inexperience, you did not realize you needed help, you were repeatedly harassed and insulted due to your accent, it included being hit and yelled at by noncommissioned officers, they could not understand what you were saying, and this behavior encouraged other Marines to continue the abuse. In support of your contentions, you submitted a personal affidavit and Department of Veterans Affairs (VA) records; which included your Disability Benefits Questionnaire and the rating decision for your service-connected disability claim. These documents indicate that you have been authorize service connection for treatment purposes only for diagnoses of Major Depressive Disorder with Generalized Anxiety and Cannabis Use Disorder. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

Because you primarily 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:

There is no evidence that the Petitioner suffered from a mental health condition or that he exhibited any symptoms of a mental health condition while in military service. The Petitioner submitted VA compensation and pension noting service connection for treatment purposes only for Major Depressive Disorder (with Anxiety and Cannabis Use Disorder) that is temporally remote to service. 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 diagnosis of Major Depressive Disorder that is temporally remote to service. There is insufficient evidence to attribute his misconduct 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 counselings and NJP, 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 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 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 concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, there is no evidence that the you suffered from a mental health condition or that you exhibited any symptoms of a mental health condition while in military service. While the Board considered the VA evidence you provided, it agreed that it was temporally remote to your service and insufficient to provide a nexus between your misconduct and 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 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,

8/6/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]