



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

██████████  
Docket No. 340-25  
Ref: Signature Date

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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.

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 28 May 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty on 1 July 1996. On 29 May 1997, you were issued a counseling warning for displaying a lack of maturity and responsibility by not being prepared for your movement to the ██████████. You arrived late without all of your gear, received a home haircut, did not meet the standards, and lost your military identification card and weapons custody cards. You were advised that failure to take corrective action may result in administrative separation or limitation on further service.

On September 24, 1998, you tested positive on a urinalysis for marijuana. On 7 October 1998, you were medically screened and admitted to using marijuana daily from the age of 18 to present, amphetamines three times when you were 15 years old, and “acid” 12 times when you were 17 years old. On 7 December 1998, you received non-judicial punishment (NJP) for wrongful use of marijuana, wrongfully possessing drug paraphernalia, and wrongfully possessing an unregistered weapon. You received your second NJP, on 1 February 1999, for failure to go to your appointed place of duty and failure to obey an order by drinking hard liquor in the barracks. You were issued a second counseling warning for your failure to go to your appointed place of duty, malingering by concealing your whereabouts from company personnel, and displaying traits not consistent with a Marine. On 26 May 1999, you began a period of unauthorized absence (UA) that ended on 12 July 1999.

On 25 August 1999, you entered into a partial hospitalization at the Naval Addictions Rehabilitation and Education with a diagnosis of cannabis dependence. Consequently, you were notified of administrative separation processing for misconduct drug abuse. After consulting with military counsel, you waived your right to an administrative board and the Commanding Officer made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. Prior to the SA acting on your separation, you again tested positive for marijuana. On 10 January 2000, you received your third NJP for wrongful use of marijuana and UA totaling 10 days. The SA accepted the recommendation, and you were so discharged on 21 January 2000.

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 for a discharge upgrade and contentions that you were misdiagnosed with a personality disorder and later diagnosed with Bipolar Disorder and Autism Spectrum Disorder. You contend that you honestly do not remember all the events that occurred during the end of your service but remember that you tried to fall in line and found yourself consistently being in what you now come to know as a state of mania. You further contend that your first suicidal attempt was induced by a situation where your CO refused your medical attention and told you to “suck it up.” 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 your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 22 April 2025. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated, including during a partial hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not

typically amenable to treatment within the operational requirements of Naval Service.

Temporally remote to his military service, he has received a diagnosis of Autism Spectrum Disorder, which is also considered to be a lifelong condition. It is possible that the behaviors characterized as personality disorder in service may have been re-conceptualized as indicative of ASD, with the passage of time and increased understanding. Both conditions are considered to be pre-existing to military service, and there is insufficient evidence that either condition was exacerbated by military service, particularly given the extended time period that elapsed post-service before the Petitioner sought evaluation for ASD.

The Petitioner has also provided evidence of diagnoses of PTSD and Bipolar Disorder that are temporally remote to his military service and appear unrelated.

Unfortunately, his in-service misconduct appears to be consistent with his diagnosed substance use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. It is difficult to attribute his substance use to military service, given pre-service substance use reported in the record.

Additional records (e.g., 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 Ph.D. concluded, "there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition, other than substance use disorder."

In response to the AO, you provided additional evidence in support of your application and included a statement from your mental health provider. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and multiple counseling's, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included extensive drug abuse. 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 also 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.

Furthermore, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition, other than substance use disorder. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed substance use disorder rather than evidence of another mental health condition incurred in or exacerbated by military service. Further, the Board agreed that it is difficult to attribute your substance use to military service, given pre-service substance use reported in the record. 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. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

Finally, the Board also considered that you fraudulently enlisted into the Marine Corps by failing to truthfully disclose your daily drug abuse. The Board noted that your daily drug abuse, by your admission, was extensive and predated your entry into the Marine Corps.

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,

6/13/2025

