



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

██████████
Docket No. 0382-25
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 23 June 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 and commenced active duty on 25 March 2009. Prior to enlisting, you signed the Statement of Understanding on the Marine Corps Policy Concerning Illegal Use of Drugs. On 5 May 2010, you received non-judicial punishment (NJP) for unauthorized absence (UA). 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. Shortly thereafter, your command received positive urinalysis result indicating your use of THC. Consequently, you were charged with, and convicted of, wrongful use of marijuana at Summary Court-Martial (SCM). At this SCM, you were also convicted of stealing property valued at \$29.99 from the Marine Corps Exchange. You were sentenced to confinement for one month, forfeiture of 2/3 pay per month for one month, and reduction to pay grade E1. You were also issued a Page 11 regarding your wrongful use of marijuana.

Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct. You waived all rights available to you but for the right to obtain copies of documents used in the administrative separation process. Following legal review by the Staff Judge Advocate, the Commanding General directed your separation and you were so discharged on 11 August 2010.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB granted your request for an upgrade on 30 September 2024; resulting in a General (Under Honorable Conditions) (GEN) 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 Kurta, Hagel, and Wilkie Memo. These included, but were not limited to, your desire to change your discharge characterization of service and narrative reason for separation. You contend that your discharge resulted from undiagnosed mental health and cognitive issues that affected your behavior during service, you sustained multiple head injuries while in service playing football which were neither documented nor treated at the time, these injuries and untreated mental health conditions such as anxiety, depression, and cognitive impairment, contributed to the misconduct that led to your discharge, you have since been diagnosed by the Department of Veterans Affairs (VA) and are currently receiving treatment, you take full responsibility for your actions but believe your untreated mental health and cognitive challenges significantly impacted your judgment and behavior, VA compensation is crucial for you as a veteran diagnosed with a possibility of TBI and anxiety and depression, and these conditions have long-lasting effects on your cognitive and emotional health. For the purposes of clemency and equity consideration, For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the VA documentation 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 on 24 April 2025. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition

that would have warranted a referral for evaluation. There is insufficient evidence of diagnoses of TBI or PTSD, and the Petitioner has provided no evidence. Temporally remote to his military service, he has received service connection for a mental health condition. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given pre-service marijuana use that appears to have continued in service. 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 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 of diagnoses of PTSD or TBI. There is insufficient evidence that his misconduct may be attributed to PTSD, TBI, or another 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 conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. The Board also found that your conduct showed a complete disregard for military authority and regulations. 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. Lastly, the Board believed that considerable clemency was already extended to you when the NDRB upgraded your characterization of service to GEN.

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,

7/3/2025

