



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

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Docket No. 974-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 and your response to the AO.

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 with a pre-service history of involvement with civil authorities for assault and reckless driving, and you began a period of active duty on 14 January 1983. During your enlistment, you received nonjudicial punishment (NJP) on three occasions for violations of the Uniform Code of Military Justice (UCMJ), under Article 107, for a false official

statement and, under Articles 134 and 112a, for wrongful use of marijuana on two separate occasions. Following your first drug-related offense, you were issued an administrative counseling and letter of deficiencies, advising you to correct your conduct. After your second drug-related offense, you were notified of processing for administrative separation by reason of misconduct due to drug abuse. You elected to voluntarily waive your right to a hearing before an administrative discharge board and the recommendation for your administrative separation under Other Than Honorable (OTH) conditions was approved. You were so discharged on 12 December 1986.

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 have been able to turn your life around in the years since your discharge, you have become a valued member of society, and you have more than 20 years of sobriety. In support of your request, you submitted records of a pardon for a past offense, three character letters, a photograph of yourself with your children, and evidence of your recent diagnosis of bladder cancer linked to exposure to toxic water during your assignment aboard Marine Corps Base Camp Lejeune. You also indicate that in-service mental health concerns contributed to your misconduct but did not provide mental health records. 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 contend in part that a mental health condition affected your discharge, the Board also considered the AO, which advised:

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. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to provide a nexus between any mental health condition and rationale for separation. 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 insufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to any mental health condition."

In response to the AO, you submitted medical evidence that was specific to your post-service cancer diagnosis¹. After your rebuttal evidence was reviewed, the AO remained unchanged.

¹ Which did not have a nexus with your in-service misconduct and appears related primarily to clemency factors. Additionally, the Board noted you raised the issue of water contamination from Camp Lejeune. As a part of the Caring for Camp Lejeune Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Department of Veterans Affairs (VA) if they served on active duty at Camp Lejeune for at least 30 days between August 1, 1953 and December 31, 1987. The Board recommends you contact your nearest VA office to determine your eligibility for care specific to the above legislation.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact 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. 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 insufficient evidence to attribute your misconduct to any mental health condition. As explained in the AO, you did not provide any medical evidence in support of your claim. The Board agreed your personal statement is not sufficiently detailed to provide a nexus between any mental health condition and rationale for separation. 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.

Furthermore, with respect to your evidence of post-service character and accomplishments, although the Board favorably considered the limited evidence you provided, the Board observed that you did not provide a detailed personal statement and found that the evidence of your pardon raised more questions than it answered. In the absence of a more clear understanding of your post-service matters, the Board ultimately concluded that the favorable factors you provided for consideration were insufficient to outweigh the seriousness of your repeated drug abuse misconduct and your false official statement.

Finally, 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.

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

