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

[redacted]
Docket No. 1005-25
Ref: Signature Date

[redacted]

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 29 August 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.

You enlisted in the Marine Corps and began a period of active duty on 6 July 2004. You deployed in support of combat operations from 27 July 2006 through 21 January 2007; during which time you were awarded the Combat Action Ribbon (CAR) and an individual certificate of commendation for your performance of duty while under an insurgent attack. During the period from June 2007 through August 2007, you participated in drug-related activities which came under investigation by Naval Criminal Investigative Services (NCIS) and ultimately resulted in your arrest and placement into pre-trial confinement (PTC). During your PTC, you received counseling and mental health services. An official naval letter from the brig clinical forensic

counselor, who was also a licensed clinical social worker, reported that you had been diagnosed with post-traumatic stress disorder (PTSD) by a consulting Navy psychiatrist for which you were receiving services. It further opines that your personal use of marijuana appeared to have been for symptom relief as opposed to opting for heavy abuse of alcohol.

On 15 January 2008, you were tried before General Court-Martial (GCM). Pursuant to the terms of a pre-trial agreement (PTA), you pleaded guilty to violations of the Uniform Code of Military Justice (UCMJ) to include: specification 1 of Article 81, for having conspired with other Marines to commit the offense of wrongful distribution of marijuana after having left the marijuana in a mall restroom above a light fixture then instructing a person (specifically, an NCIS witness) to that location; specification 2 of Article 81, for having conspired with other Marines to commit the offense of wrongful distribution of marijuana by travelling to a parking lot and distributing the marijuana to a witness (specifically, an NCIS witness); specifications 1 through 3 under Article 112a, for wrongfully distributing marijuana on three occasions; and, specification 4 under Article 112a, for wrongfully introducing marijuana onto a military installation. In total, your maximum sentence without the protection of your PTA amounted to a potential of 15 years, per offense, for each distribution and attempted distribution charge and specification with an additional five year potential maximum sentence for the wrongful introduction offense. At trial, you were sentenced by the military judge to a Dishonorable Discharge (DD), reduction to the lowest paygrade of E-1, and eight years of confinement with total forfeitures of pay and allowances. Per the terms of your PTA, however, all confinement in excess of 18 months was suspended. Notably, the convening authority's action on your GCM referenced two companion cases for the conspiracy offenses; the sentences for those Marines included a Bad Conduct Discharge with respective confinement sentences of only 14 months and eight months. The findings and sentence of your GCM were affirmed on 12 August 2008 by the Navy Marine Corps Court of Criminal Appeals (NMCCA). Your DD was ordered executed and, on 7 January 2009, you were punitively discharged in accordance with your approved sentence.

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 change your narrative reason for separation to Secretarial Authority. You contend that you have been sufficiently punished for your misconduct by virtue of your federal felony conviction, period of confinement, and necessity to overcome your punitive discharge after your release. You state that you have learned from your misconduct, grown in character, and established yourself as a role model within your community for others to emulate. You also submitted evidence of significant achievements since your discharge, to include obtaining qualifications in the HVAC field, starting your own business, and ultimately being recognized in 2024 by the Governor of [redacted] with an achievement award for being a "top employer" within the state. For the purpose of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, the legal brief, supporting evidence related to your PTSD diagnosis, your post-discharge résumé, and 14 character letters.

Because you contend, in part, that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

> There is no evidence that the Petitioner was diagnosed with a mental health condition or PTSD during his military service or that he suffered from any

> symptoms incurred by a mental health condition. He submitted one letter that appears to have been written by a social worker during his active duty time (2008) that states he had been diagnosed with PTSD. His available service record is sparse and does not contain any medical records for review. His personal statement is not sufficiently detailed to provide a nexus between his claimed mental health condition and in-service misconduct.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a diagnosis of PTSD that existed in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug distribution offenses. The Board determined that illegal drug distribution 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.

Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. Notwithstanding your contentions of PTSD and use of marijuana for self-medication, the Board noted that your GCM offenses did not result from your person use of a controlled substance; rather, you were convicted of multiple accounts of distribution and attempted distribution of controlled substances, to include involving other Marines in your nefarious activities. The Board observed that, in contrast to personal drug abuse for purposes of self-medication, distribution of drugs to others would not normally be considered a symptom or behavior of PTSD. 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.

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 and commends you for your post-discharge accomplishments, 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,

9/18/2025

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