



**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. 1129-25  
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 24 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 (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 afforded an opportunity to submit an AO rebuttal, 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 began a period of active duty on 1 September 1983. On 8 November 1984 and 6 May 1985, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 7 May 1985, you received a medical evaluation to determine your

relationship with drugs and alcohol. You were medically examined and subsequently diagnosed as an episodic abuser of marijuana.

Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were informed that the least favorable characterization of service you may receive is under Other Than Honorable (OTH) conditions. You elected your right to consult with counsel. After consulting with counsel, you waived your right to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps. The CO stated in pertinent part:

Further retention of [Petitioner] would have a detrimental effect on the morale, discipline and military effectiveness of this command or any other command to which he may be assigned. Separation by reason of misconduct due to drug abuse with a discharge under other than honorable conditions is strongly recommended.

The separation authority directed your administrative discharge by reason of misconduct due to drug abuse with an OTH character of service and you were so discharged on 10 July 1985.

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 to upgrade your discharge character of service and contentions that: (1) you suffered from alcohol/drug addiction which resulted in your misconduct and discharge, (2) you were not offered treatment, and (3) you sought assistance and with support you have been clean and sober for the past 23 years. 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 without any other additional documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 12 May 2025. The AO stated 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. He has provided no medical evidence to support his claims. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his preservice substance use which appears to have continued in service.

The AO concluded, "There is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. Additionally, 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. The Board found that your misconduct was intentional and made you unsuitable for continued naval service.

Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct; particularly given your preservice substance use which appears to have continued in service. The Board agreed there is no evidence that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition and you provided no medical evidence to support your claims. 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 otherwise 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, the Board determined your command was under no obligation to send you to alcohol or drug rehabilitation treatment unless it was determined, by competent medical authority, that you were dependent. There is no documentation in your record that shows you were alcohol or drug dependent. 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 commends you for your post service sobriety and 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,

7/10/2025

