



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

██████████
Docket No. 1505-25
Ref: Signature Date

████████████████████
████████████████
████████████████████████████████████
████████████████████

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 18 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 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.

You enlisted in the Marine Corps and commenced active duty on 28 November 1983. On 16 April 1985, you received non-judicial punishment (NJP) for wrongful use of a controlled substance (Cannabinoid). Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. You consulted with legal counsel and waived all rights available to you; but for the right to obtain copies of documents used in the separation process. Your Commanding Officer recommended your separation with an OTH characterization of service and, after appropriate

review by the Staff Judge Advocate, your Commanding General approved the recommendation. You were so discharged on 5 July 1985.

Post discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 22 February 2000, based on their determination that your discharge was proper as issued.

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 upgrade your discharge and change your narrative reason for separation to Secretarial Authority, with corresponding changes to your separation and reentry codes. In addition, you contend that your discharge was unfair at the time, that it was procedurally defective and inequitable, and that it remains unfair now. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and your legal brief with enclosures.

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 6 June 2025. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He did not submit any medical evidence in support of his claim. His personal statement lacks sufficient detail to provide a nexus between his misconduct and any mental health condition. 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) may 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 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 NJP, 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.

Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that existed during your service and insufficient evidence to attribute your misconduct to a mental health condition. The Board also agreed that your personal

statement lacked sufficient detail to provide a nexus between your misconduct and any mental health condition. 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.


Finally, the Board found no evidence to support your contention that your discharge was unfair or somehow defective. The Board noted you were appropriately processed for administrative separation, in accordance with applicable regulations, based on your wrongful use of marijuana¹. As part of your administrative separation processing, you to consulted with legal counsel and acknowledged your procedural rights. Therefore, the Board was not persuaded by your contentions of error and injustice.

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-service 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 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,

8/27/2025



¹ A finding that was made as part of a NJP hearing where you were provided additional due process rights, including the right to appeal the finding of guilt.