



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

██████████
Docket No. 1630-25
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 limitations 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 13 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You entered active duty with the Marine Corps on 7 September 1979. On 13 March 1980, you were formerly counseled on your unauthorized absence (UA). On 27 June 1980, you were formerly counseled on obtaining permission from the non-commissioned officer (NCO) in charge before absenting yourself from your section. On 13 July 1981, you were formerly counseled on your responsibility to be at your appointed place of duty. On 11 May 1982, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 7 March 1983, you tested positive for marijuana. Consequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA)

recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and you were so discharged on 31 August 1983.

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 and contentions you incurred PTSD and mental health concerns during military service due to mistreatment and wrongful accusations of marijuana use, you received the Good Conduct Medal and a letter of appreciation while serving, and you were denied the opportunity to advance to the rank of E-4. You further contend that you never used drugs, never received evidence showing you tested positive, and you were thus denied due process. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and excerpts from your service record.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during 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. He has provided no medical evidence to support his claims. Unfortunately, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to mental health concerns."

In response to the AO, you submitted a statement that provided additional information regarding the circumstances of your case. 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 your misconduct, as evidenced by your NJP and second positive urinalysis, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug related 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 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.

Additionally, the Board concurred with AO that there is insufficient evidence that your misconduct may be attributed to mental health concerns. As pointed out in the AO, there is no evidence that you were diagnosed with a mental health condition in military service and, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Finally, 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 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.

Finally, the Board found no evidence to support your allegation of denial of due process. Your record contains your acknowledgement of rights pertaining to your NJP and your decision not to request a trial by court-martial. Further, the Board observed that you consulted with legal counsel prior to making these decisions. Furthermore, contrary to your contention, your record contains documentation of a positive urinalysis. Finally, your record documents that you refused to acknowledge your administrative separation rights and, in doing so, waived them. Thus, the Board found that you were provided all required due process related to your NJP and your administrative separation.

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 provided 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 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,

8/26/2025

