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

[redacted]
Docket No. 1792-25
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 22 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 15 July 1998. On 15 June 1999, you received non-judicial punishment (NJP) for a single day of unauthorized absence (UA) in violation of Article 86 of the Uniform Code of Military Justice. In July 2001, you were issued administrative counseling warning you to correct deficiencies with respect to your conduct, to include failure to be at your appointed place of duty, failure to complete assigned tasks, and unacceptable conduct for a noncommissioned officer. On 5 October 2001, you were subject to your second NJP for two violations of Article 92 of the UCMJ due to consuming alcoholic

beverages while under the legal drinking age and for having ammunition in your barracks room in violation of a Squadron order. On 15 October 2003, you pleaded guilty at a Special Court-Martial (SPCM) for two specifications of UCMJ violations under Article 112a, due to wrongful use of marijuana. You sentence included reduction to the paygrade of E-1, 40 days confinement, and a Bad Conduct discharge. After appellate review, your punitive discharge was executed on 30 June 2007.

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 your court-martial charges and sentence were "ridiculous" because the SPCM forum should be "reserved for the most egregious crimes" such as larceny, sexual assault, or battery, you were accused and found guilty of only using marijuana twice, you never demanded trial by court-martial and were not given an option to request separation in lieu of trial, and you believe that an equitable discharge for two-time marijuana use would have been administrative separation with a General (Under Honorable Conditions) characterization of service. You further allege ineffective assistance of counsel (IAC) due to your counsel's failure to get the charge reduced to a single count on the basis of the proximity of the dates of your urinalysis tests and also deny having used marijuana again following your test on 3 March 2003. You claim that you used marijuana due to struggling with behavioral health issues; specifically, your in-service diagnosis of adjustment disorder with depressed mood and several purported traumatic brain injuries (TBIs). You also raise mental health concerns that you experienced due to trauma with extreme depression and guilt after being a passenger in a vehicle crash which resulted in the death of a fellow Marine. Regarding your head injuries, you argue that you were hit in the head by a door in September 2000 and also injured your head in a motorcycle accident in May 2000; after which you also began feeling numbness in your arms and hands. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, service health records, your legal counsel's brief, and evidence of that your access to medical care was terminated by the Department of Veterans Affairs (VA) in 2025 due to your punitive discharge.

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

> There is some evidence that the Petitioner was diagnosed with a mental health condition in military service. An adjustment disorder is typically considered a temporary condition which resolves when the stressor, such as military service, is resolved. While the Petitioner has provided evidence of possible head injuries in service, there is insufficient evidence of residual, long-term symptoms consistent with TBI. He has provided evidence of brain imaging that is temporally remote to his military service and appears unrelated. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given preservice marijuana use that appears to have continued in service. 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 some in-service evidence of a mental health condition. There is insufficient evidence of TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to TBI or another mental health condition."

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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 determined that a punitive discharge is generally warranted for repeated instances of drug abuse misconduct; especially when preceded by a history of prior misconduct. To the extent that you believe it was inappropriate to try your drug offenses before SPCM when you had not demanded court-martial, the Board noted that it was within the discretion of the convening authority to determine an appropriate disposition of your offenses and the Board found no evidence of abuse of discretion based on your record of misconduct prior to your drug abuse. With respect to separation in lieu of trial, your detailed defense counsel would have been aware of, and presumptively competent, to advise you regarding your right to submit such a voluntary requests. As it stands, neither your records nor the evidence you submitted indicate that you attempted to submit any such request or that such request, if submitted, was denied. The Board observed that your SPCM proceedings, at which you elected to voluntarily enter pleas of guilty, would have required that the military judge find you provident to each element of the charged offenses; to include more than a single instance of marijuana use. Otherwise, the military judge could not have accepted your pleas as provident. As such, the Board found your contention of IAC and your claim that you did not use marijuana after your 3 March 2003 urinalysis test to be unpersuasive.

Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to TBI or another mental health condition. As explained in the AO, the medical evidence you provided is insufficient to provide a nexus between your conditions and your misconduct. 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, to the extent that you have submitted evidence that your access to medical care was terminated by the VA, the Board notes that your entitlement to VA benefits rests solely within the cognizance of the VA. However, 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,

9/10/2025

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