



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. 1883-25

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 28 July 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, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgraded 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

During your enlistment processing you disclosed pre-service marijuana use and were granted a moral enlistment waiver. You enlisted in the U.S. Marine Corps and began a period of active duty on 12 June 1989. Throughout your enlistment, you were formally counseled on multiple occasions for various infractions including two separate off-base incidents of driving while intoxicated, failure to report to your place of duty on time, failure to adhere to regulations, demonstrated indifference toward assigned duties, insubordinate behavior, disrespect towards superiors, failure to fulfill your obligation to provide proper physical and financial support for your family, repeated instances of unauthorized absence, failure to maintain a neat personal appearance, and improper upkeep of your uniform. Between 23 October 1991 and 27 May 1992, you received one nonjudicial punishment (NJP) and were convicted by both Summary Court-

Martial (SCM)¹ and a Special Court-Martial (SPCM) for multiple violations of the Uniform Code of Military Justice (UCMJ). Your SPCM conviction was for one specification of failing to go to your appointed place of duty and one specification of wrongful use of a controlled substance (marijuana and cocaine). You were sentenced to a Bad Conduct Discharge (BCD) for at your SPCM. A subsequent medical evaluation determined that you were not substance dependent and that no psychiatric diagnosis was warranted. Your BCD was ultimately ordered to be executed and you were so discharged on 31 July 1993.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade contending that you received a Good Conduct Medal, National Defense Service Medal, a meritorious promotion, achieved excellent physical fitness test scores, were nearing the completion of your enlistment, and believed that the discharge you received was unjust. You further asserted that personal hardships, including marital and financial difficulties, adversely affected your ability to perform your duties. Specifically, you cited your ongoing divorce as a factor that impaired your service performance. You argued that the punishment you received would be considered overly harsh by current standards and that you were denied access to the help you requested. Additionally, you claimed that your discharge was characterized as “for the good of the service,” which you asserted did not accurately reflect the underlying basis for your court-martial. You pointed out that your separation was the result of a single positive urinalysis and claimed that other Marines in similar circumstances did not receive similarly severe punishment. You also alleged that you were subjected to double jeopardy in relation to the issuance of bad checks since you already paid restitution and a fine before being tried by a special court-martial. You concluded that your discharge was inequitable, as it was based on one isolated incident during an otherwise honorable 36-month period of service. The NDRB denied your request for an upgrade, on 29 December 2004, based on their determination that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your current contentions that: (1) you have achieved substantial personal growth since your discharge, demonstrated a sustained improvement in your attitude and conduct, and remained free from substance abuse, (2) you have successfully completed trade school training, and (4) you believe the level of stress you experienced during the Gulf conflict significantly impacted your well-being, including the onset or aggravation of underlying mental health conditions. 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.

Based on your assertions that you incurred mental health issues during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

¹ You were found guilty by a Summary Court-Martial of two specifications of larceny and one specification of unlawfully entering a fellow Marines room. You were sentenced to 30 days of confinement at hard labor and reduction in rank to E-1.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service or that he suffered from any symptoms incurred by a mental health condition. He submitted one letter from the Birdwell Foundation; however, the letter did not mention any psychiatric diagnoses or symptoms. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and a 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 any mental health condition."

After a 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, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included 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. The Board noted that marijuana and cocaine 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 concluded that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your BCD. 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. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that existed in service or that could be attributed to your misconduct. As explained in the AO, the medical letter you provided did not reference any psychiatric diagnoses or documented symptoms. 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 your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge rehabilitation, 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,

8/7/2025

