



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. 2071-25
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 21 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 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 and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 18 November 1999. On 25 March 2002, the results of a urinalysis test indicated your use of marijuana. Subsequently, on 7 October 2002, you were convicted at Summary Court Martial (SCM) of violating Article 112a of the Uniform Code of Military Justice (UCMJ), for wrongful use of marijuana, and Article 86 of the UCMJ, for unauthorized absence (UA) from 22 April 2002 until 4 June 2002. You were sentenced to reduction to pay grade E1, confinement for 30 days, and forfeiture of \$511 pay per month for one month.

Consequently, you were notified of administrative separation processing for drug abuse. After you waived your procedural rights, your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. The Staff Judge Advocate reviewed and concurred with this proposed separation and the separation authority approved it. You were so discharged on 3 January 2003.

Post-discharge, you applied on three occasions to the Naval Discharge Review Board (NDRB) for relief. On each occasion, the NDRB denied your request, 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 characterization of service and change your narrative reason for separation to “medical” or “hardship,” with corresponding change to your separation code. You contend you were not properly separated from the Marine Corps and your actions and behavior leading to your discharge were directly caused by undiagnosed schizophrenia, depression, and anxiety. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, your legal brief with exhibits, and your AO rebuttal evidence.

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 2 June 2025. The AO noted in pertinent part:

Petitioner contended he was suffering from undiagnosed symptoms of mental health concerns during military service, which contributed to his misconduct. He provided August 2024 mental health records listing a history of treatment from 2013 to 2024 for diagnoses of Schizophrenia, Anxiety, and Depression. He submitted a statement in support of his experience and evidence of character and post-service accomplishment.

Petitioner was evaluated during military service and did not receive a mental health diagnosis. The absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has received treatment for mental health concerns that are temporally remote to his military service and appear unrelated. Unfortunately, available records are not sufficient 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition.”

In response to the AO, you provided rebuttal evidence in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. Although the Board carefully considered the rebuttal evidence you provided in an attempt to show a nexus between your misconduct and undiagnosed schizophrenia as well as other mental health conditions, it was not persuaded. As explained in the AO, the available records are not sufficient to establish clinical symptoms in service or provide a nexus with your misconduct. In addition, the Board found your argument that you suffered from preservice undiagnosed schizophrenia and other mental health conditions to be inconsistent with your record of performance prior to your UA and incident of drug abuse. Despite your arguments that you were symptomatic of mental health conditions, the Board noted that your record is devoid of any misconduct prior to your UA and drug abuse. The Board observed that you only received a single counseling, after being dropped from an academic course, over the course of more than two years of active duty service prior to your UA. 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.

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 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,

8/7/2025

