



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

██████████  
Docket No. 2086-25  
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 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case on the evidence of record.

During your enlistment processing you were granted an enlistment waiver for pre-service marijuana use. On 13 October 1993, you signed a Statement of Understanding acknowledging the U.S. Marine Corps' policy concerning illegal drug use. You subsequently enlisted in the U.S. Marine Corps and began a period of active duty on 9 November 1993. From 9 November

1994 through 7 April 1995, you received three non-judicial punishments (NJPs) for disrespect in deportment, two specifications of disobeying a lawful order, drunk and disorderly conduct, unauthorized absence (UA), and two specifications of breaking restriction. You did not appeal any of these NJPs.

During this period, you were treated for a disability condition related to your feet. Eventually, you were found unfit for continued naval service by the Physical Evaluation Board for your foot related disability and assigned a 10% disability rating on 19 April 1995.

However, in May 1995, you were involved in additional misconduct of disrespect and assault against a non-commissioned officer (NCO). You then tested positive for wrongful use of marijuana. Consequently, on 4 December 1995, a special court-martial convicted you of disrespectful language against an NCO, assault of an NCO, and wrongful use of marijuana. You were sentenced to confinement for 45 days, forfeiture of \$400.00 pay per month for two months, reduction in rank to E-1, and a Bad Conduct Discharge (BCD).

While awaiting appellate review of your SPCM, on 8 April 1996, you were subject to another NJP for UA, UA from your appointed place of duty, and an orders violation. On 17 December 1996, following completion of appellate review, the BCD was ordered executed, and you were discharged on that date.

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 for an upgrade of your discharge and your contentions that: (1) you incurred mental health issues during military service, (2) you have been experiencing significant mental health challenges and periods of homelessness since discharge, (3) you continue to suffer from medical conditions that have affected you both mentally and physically, (4) you are actively seeking assistance to manage your pain and anger, (5) you are remorseful for the actions that resulted in the loss of your military career, (6) at the time of the incident, your medical records reflect that your feet were in “very bad shape,” (7) a fellow service member repeatedly confronted you in attempts to compel you to disregard your profile but the pain from your feet caused you to lose control. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of what you stated on your DD Form 149 without any additional documentation<sup>1</sup>.

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 on 28 June 2025. The AO stated in pertinent part:

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 did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to provide

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<sup>1</sup> The Board noted your DD Form 149 indicates submission of a 1999 barber’s license but the document was not included with your application.

a nexus between his misconduct and any in-service 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 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined that illegal drug use by a service member is contrary to 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 also found 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 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.

Lastly, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you did not provide medical evidence in support of your claim and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your request. Moreover, the Board was not persuaded by your contention that your foot related disability condition had a nexus to your misconduct. The Board observed that you entered the Marine Corps with a history of drug abuse and consistently committed misconduct over the course of your active duty service. 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.

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. 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. 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,

9/5/2025

