



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

██████████  
Docket No. 2260-25

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 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 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 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 the advisory opinion (AO) furnished by a qualified mental health professional on 5 June 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 4 December 1979. Upon your enlistment, you received a waiver for grand theft. Between 21 February 1981 and 19 June

1981, you received nonjudicial punishment (NJP) on two occasions for two instances of unauthorized absence (UA) from appointed place of duty and disobeying a noncommissioned officer (NCO). On 5 November 1981, you were evaluated by a medical officer as a result of an automobile collision near TBS. You were diagnosed with head trauma, right shoulder sprain, and abrasions in both hands. On 24 November 1981, you received a third NJP for two instances of UA from appointed place of duty. On 7 January 1982, you were counseled concerning a positive urinalysis indicating the use of a controlled substance-marijuana. You were advised that failure to take corrective action could result in administrative separation.

On 18 January 1982, you received a fourth NJP for two instances of UA from appointed place of duty-drug rehabilitation. On 2 March 1982, you were convicted by summary court martial (SCM) for five instances of UA from appointed place of duty, violation of a lawful order by being in possession of 4.1 grams of marijuana, and breaking restriction. You were sentenced to reduction in rank, a period of confinement at hard labor, and forfeiture of pay. Between 28 June 1982 and 9 July 1982, you received NJP on two occasions for five instances of UA and disrespect towards an NCO.

On 17 August 1982, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement with military authorities, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. On 13 September 1982, you were convicted by special court martial (SPCM) for wrongful use of a controlled substance-marijuana. You were sentenced to a period of confinement at hard labor and forfeiture of pay.

On 20 August 1992, you were counseled concerning involvement of discreditable nature and advised that such behavior may result in administrative separation with an OTH discharge characterization. On 9 December 1982, your SPCM sentence was approved and ordered to be executed. On 10 January 1983, you received a seventh NJP for willfully disobeying a lawful order from an NCO. On 18 January 1983, your administrative separation proceedings were determined to be sufficient in law and fact. On 24 January 1983, the separation authority approved an OTH discharge characterization by reason of misconduct due to frequent involvement with military authorities. On 2 February 1983, you were so discharged<sup>1</sup>.

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 for a discharge upgrade and contentions that: (a) prior to joining the Marine Corps, you were hanging in corners drinking, smoking marijuana, and coming home early in early morning hours or not at all, (b) you were

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<sup>1</sup> The Board noted several administrative errors with your DD Form 214. Specifically, your reason for separation erroneously states you were discharged due to "Misconduct – Civilian Conviction (Admin Discharge Board Required but Waived) and your characterization of service simply states "Misconduct." In accordance with existing Board policy, it declined to change make corrections to your DD Form 214 since it may potentially negatively affect you, e.g. replacing "Misconduct" with "Other Than Honorable." Therefore, should you desire to have your DD Form 214 changed to accurately reflect your correct reason for separation and OTH characterization of service, the Board requests you submit another DD Form 149 specifically requesting such relief. While the Board noted you questioned the civilian misconduct basis for your separation, your request implied that your separation was done in error; a finding the Board did not substantiate.

homeless, without stability, and completely lacking a way to financially support yourself, (c) small jobs only provided enough support your marijuana use habits, (d) a fellow Marine invited you to smoke a joint leading you to pick the habit back up to cope and deal with life, (e) you continued using marijuana for 14 months until receiving orders to go to Quantico, (f) you were discriminated against further advancement as a result of favoritism, (g) you felt betrayed and demotivated as you felt devalued, unseen, and cast aside, (h) the shootings during a three day exercise brought intense moments of fright, causing you to freeze while shooting your weapon, (i) you were involved in a car collision that left you partially paralyzed, (j) you were later diagnosed with head trauma and you felt that you would received a medical discharge, (k) you were unjustly charged and convicted for possession of marijuana. You also checked the “TBI” box on your application but did not provide evidence in support of your claim<sup>2</sup>. 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.

As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in 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. Temporally remote to his military service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his misconduct occurred prior to the car accident and continued afterwards. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD 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, SCM, 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 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

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<sup>2</sup> The Board observed you submitted a Department of Veterans Affairs (VA) decision document that granted you a service connection for a mental health condition and several orthopedic conditions. In addition, you also provided a copy of the medical record that documents your in-service automobile accident. The Board found no medical evidence to support your claim that you suffered a traumatic brain injury.

was sufficiently pervasive and serious to negatively affect the good order and discipline of your command.

Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As explained in the AO, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Further, the Board agreed that your Department of Veterans Affairs evidence is temporally remote to your service and not sufficiently detailed to provide a nexus between a mental health condition and your extensive 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.

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 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 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,

8/1/2025

