



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

██████████
Docket No. 2373-25
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 5 December 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

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 based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 12 April 2000. On 14 March 2000, you signed and acknowledged the "Marine Corps Policy Concerning

Illegal Use of Drugs.” Your pre-enlistment physical examination, on 16 March 2000, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. You disclosed pre-service use of marijuana between 1995 and 1998, requiring an enlistment waiver.

On 22 September 2000, you received non-judicial punishment (NJP) for failing to obey a lawful order. You did not appeal your NJP.

On 2 October 2000, you commenced a period of unauthorized absence (UA) that terminated on 17 October 2000. On 7 November 2000, you received NJP for your 15-day UA. You did not appeal your NJP.

On 17 April 2001, you commenced another UA that terminated on 13 August 2001. On 11 December 2001, you were convicted at a Summary Court-Martial (SCM) for your 118-day UA. You were sentenced for forfeitures of pay, confinement for thirty (30) days, and a reduction in to the lowest enlisted paygrade (E-1). The Convening Authority approved the SCM sentence on 12 December 2001.

On 13 December 2002, a Navy Drug Screening Laboratory message indicated that you tested positive for marijuana. On 13 January 2003, you received NJP for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

On 29 January 2003, your command issued you a “Page 11” counseling warning (Page 11) documenting your use of a controlled substance, your pattern of misconduct, missing restriction muster sign in, and breaking restriction limits. You elected not to submit a rebuttal statement.

On 7 February 2003, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your rights to consult, submit written statements, and to request a hearing before an administrative separation board.

In the interim, on 7 April 2003, you refused drug rehabilitation treatment. Ultimately, on 17 April 2003, you were separated from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4B reentry code.

On 25 February 2015, the Naval Discharge Review Board (NDRB) denied your discharge upgrade application. You did not proffer any mental health-related contentions whatsoever with your NDRB application.

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) you should receive an upgrade due to the misconduct of your superiors in your unit, and the traumatic brain injury (TBI) that occurred on active duty, (b) the circumstances surrounding your service-marked by poor leadership, traumatic experiences, and a lack of support-contributed significantly to the events that led to your discharge characterization,

and (c) you ask that the Board consider your full story, including the challenges you faced, the impact of a TBI that further prolonged your PTSD, the systemic failures within your unit, and the long-term effects that have followed you for over two decades. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 3 June 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner declined substance use treatment during his enlistment. There is no other in-service evidence of a mental health condition. He has provided medical evidence of mental health diagnoses that are temporally remote to his military service and appear unrelated. In post-service mental health evaluations, he stated that his mental health symptoms onset after his military service, and did not describe traumatic precipitants from his military history. There is no medical evidence of TBI, and the Petitioner reports that he incurred it after misconduct that resulted in confinement in the brig.

The Ph.D. concluded, "There is insufficient evidence of a diagnosis of TBI, PTSD, or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD, TBI, or another mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. modified their original AO to conclude, "There is post-service evidence from the VA of a diagnosis of TBI that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI, PTSD, or other mental health concerns."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any TBI, mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such TBI and/or mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to TBI or mental health-related conditions or symptoms. The Board also noted that the TBI you purportedly experienced occurred after you were placed in the brig following your 118-day UA. Even if the Board assumed that your misconduct was somehow attributable to TBI or any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board further 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.

The Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.9 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct totaling three (3) NJPs and one SCM conviction was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The simple fact also remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status on two separate occasions without any legal justification or excuse for 133 days.

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 in 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,

12/12/2025

