



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 3345-25

Ref: Signature Date

[REDACTED]

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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 25 July 2005. On 26 October 2004, you signed and acknowledged the "Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 28 October 2004, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms. You also disclosed pre-service marijuana use on your enlistment application.

On 21 May 2007, you received non-judicial punishment (NJP) for an assault on a fellow Marine resulting in a laceration to the other Marine's face that required stitches. You did not appeal your NJP.

On 10 October 2008, you received NJP for insubordinate conduct. You did not appeal your NJP.

On 11 November 2008, civilian authorities in [REDACTED] arrested you on charges of: (a) Felony possession of marijuana; (b) Possession with intent to manufacture, sell and deliver marijuana, (c) Manufacture of marijuana, (d) Possession of drug paraphernalia. On 9 December 2008, your command issued you a "Page 11" counseling Page 11 documenting your arrest by civilian authorities and for being incarcerated for possession of illegal drugs. You acknowledged you were being processed for administrative separation for drug abuse and commission of a serious offense. You elected not to submit a rebuttal statement.

On 22 December 2008, your command issued you a Page 11 documenting your assignment to the Force Protection Program in a "High Risk" category Marine due to your recent arrest on suspicion of illegal drug activity. The Page 11 informed you that your liberty was limited to the boundaries of Marine Corps Base [REDACTED]

On 26 February 2009, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse and commission of a serious offense. On 27 February 2009, you consulted with counsel and elected your right to request a hearing before an administrative separation board (Adsep Board).

On 27 February 2009, your commanding officer (CO) initially recommended to the Separation Authority (SA) that you should receive an under Other Than Honorable (OTH) discharge characterization. In his recommendation, your CO stated, in pertinent part:

I have personally interviewed [REDACTED] SNM was maintaining a dwelling that contained over 84 milligrams of marijuana, much of which was individually packaged as if for resale...SNM possessed a clear plastic bag of marijuana in his right front pocket at the time of the search. Additionally, cell phone text messages concerning the sale of narcotics were recovered by the investigators. His documented misconduct proves that he has no regard for the law and no potential for continued service.

On 9 April 2009, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously concluded that the evidence proved all acts or omissions as noted in the notification. The Adsep Board members then unanimously recommended to the SA that you be separated with an OTH discharge characterization.

On 30 April 2009, the Staff Judge Advocate to the SA determined that your separation proceedings were legally and factually sufficient. Ultimately, on 22 May 2009, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and assigned an RE-4B reentry code.

On 12 December 2017, the Naval Discharge Review Board (NDRB) denied your discharge upgrade application. In making its determination, the NDRB noted, in part, that:

The Applicant's official military service record does not contain a diagnosis of PTSD; however, post-service documentation provided by the Applicant, support the Applicant's contention that his PTSD was a mitigating factor associated with the in-service misconduct. Though the Applicant may feel that PTSD was the underlying cause of his misconduct, the record reflects willful misconduct that demonstrated he was unfit for further service. The evidence of record did not show that the PTSD was a sufficient mitigating factor to excuse the Applicant's conduct or accountability concerning his actions. After an exhaustive review, the NDRB determined that PTSD did not mitigate the Applicant's misconduct. Felony Possession of Marijuana; Possession with intent to manufacture, sell and deliver Marijuana, Manufacture of Marijuana, Maintaining a Dwelling or Vehicle and Possession of Drug Paraphernalia, charges resulting from the Applicant's arrest, were all conscious decisions to violate the tenants of honorable and faithful service.

Furthermore, the Applicant's record does not document any attempts to seek help, conversely, medical documents yielded that the Applicant refused treatment for any combat stress-related symptoms while in service. Unable to link PTSD with the illegal possession and distribution of narcotics, specifically marijuana, the NDRB is unable to establish this contention as a basis for mitigation or consideration as an extenuating circumstance. Relief denied.

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 with changes to your reason for separation, separation authority, and reentry code. You contend that: (a) undiagnosed and untreated PTSD mitigated the infractions leading to your discharge, and you earned leniency through multiple combat tours and have been punished enough, (b) your meritorious contributions were not outweighed by misconduct that represented symptoms of heightened aggression, irritability/hypervigilance, and attempts to self-medicate, (c) your OTH discharge was unjust because your mental health condition, PTSD, and traumas were major contributing factors to the misconduct leading to your discharge and should be viewed as mitigating factors, (d) your mental health condition existed during service, evidenced by your recent forensic evaluation, (e) your remorse and efforts to make amends are worthy of consideration, (f) you have earned a degree, support your family, and contributed to disaster relief as a union worker, (g) positive post-service conduct, and the possibility that improved access to treatment for service-connected conditions would improve your life even further, show that it is in the interests of justice to grant relief in the form of record correction and discharge upgrade, and (h) a discharge upgrade for you, now thirty-eight years-old, is a matter of honor. 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 18 July 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner endorsed PTSD symptoms on a Post deployment Health Re-Assessment (PDHRA) while in service. He submitted post service evidence of PTSD, Major Depressive Disorder, Panic Disorder, Alcohol Use Disorder, and Cannabis Use Disorder. It is possible that he was suffering from PTSD symptoms while in service which may have contributed to non-injurious assault and disrespect; however, manufacturing with intent to sell or distribute narcotics is not typical behavior that can be said to have been caused by a mental health condition or PTSD.

The Ph.D. concluded, "it is my clinical opinion that there is sufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute *all* of his misconduct to a mental health condition."

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 purported PTSD, mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such PTSD 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 PTSD or mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to PTSD or any other 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 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 manufacture, possession, and distribution 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 manufacturing, possession with intent to sell/deliver, and/or marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. Moreover, absent a material error or

injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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,

12/17/2025

