



**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. 3426-25  
Ref: Signature Date

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Dear ■■■■■■

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 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 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 (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; which was considered favorable to you.

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 Marine Corps and began a period of active duty on 18 December 2001. On 22 July 2002, you reported to Inspector Instructor Staff ■■■■■, ■■■ for duty. On 14 December 2002, you were issued an administrative remarks (Page 11) counseling concerning your failure to be at your appointed place of duty at the prescribed time ordered by your chain of command. On

22 January 2003, Navy Drug Laboratory, █ reported that your urine sample tested positive for THC (marijuana). On 12 February 2003, you were issued a Page 11 counseling concerning your failure to be at your appointed place of duty, lying to senior enlisted within your chain of command, and the illegal use of a controlled substance. On 1 April 2003, you were found guilty by a summary court-martial (SCM) of failure to go to your appointed place of duty and wrongful use of marijuana.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were informed that the least favorable characterization of service you may receive is under Other Than Honorable (OTH) conditions. You waived your procedural right to consult with counsel and request a hearing before an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] has proven unable to conform to the disciplines of the Armed Forces and has proven this in his daily conduct and has confirmed it by his poor decisions to smoke marijuana. His current status precludes this command from sending him to his MOS school and his follow-on duty station. [Petitioner] is nearing a point where he can complete his obligated service time without completing MOS training since he will not have obligated service time. [Petitioner] is not only a leadership challenge, but also a burden to this command. While we have managed to employ him as a Pvt, he requires constant supervision and reduces the effectiveness of the I&I staff. Request expeditious processing of this package. During the period since his initial urinalysis failure, [Petitioner] has had THC on two subsequent urinalyses and continues to be a burden on this command.

Prior to the separation authority's decision, on 1 June 2004, Navy Drug Laboratory, J █ again reported that your urine sample tested positive for marijuana. Ultimately, the separation authority approved the recommendation for your administrative discharge, and you were so discharged on 23 June 2004.

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 to upgrade your discharge character of service to Honorable and contentions that neither your medical condition nor your mental health issues were properly diagnosed and you were hospitalized and admitted for six months due to seven major surgeries. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, health care documents, photographs, and a news article.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 17 July 2025. The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with depression while being hospitalized in June 2002 due to medical complications following what should have been a routine appendectomy. He was prescribed Prozac for his observed depression. His available service record is sparse; however it is possible that he continued to suffer from depression following his unexpected infections (sepsis) and E.coli, and that he used marijuana to cope with his depression. Additional records (e.g., active duty medical and mental health records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a diagnosis of depression that existed in service, which was a result of unforeseen and serious medical issues. There is sufficient evidence to attribute his misconduct to a mental health condition (Depression)."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evident by your SCM conviction outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. Additionally, 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. The Board also considered the negative effect your misconduct had on the good order and discipline of your command. The Board found that your misconduct was intentional and made you unsuitable for continued naval service.

Further, despite the conclusion of the AO, the Board did not find sufficient evidence to establish a nexus between your mental health condition and the misconduct for which you were discharged. The Board did not question that you suffered from a mental health condition but simply felt that it had insufficient information regarding the nature and manifestation of your condition upon which to draw any reasonable conclusions. Nevertheless, 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, 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,

8/15/2025

