



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. 3501-25
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 15 September 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 12 July 2005. On 18 July 2006, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct for failure to maintain physical conditioning. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You deployed in support of █ from 28 July 2006 to 20 February 2007. On 30 July 2007, you commenced a period of unauthorized absence (UA) that ended on 4 September 2007. On 13 September 2007, you received non-judicial punishment (NJP) for the period of UA. On

18 September 2007, your command received notification of your positive urinalysis for Tetrahydrocannabinol (THC).

On 11 October 2007, you submitted a written agreement to plead guilty at summary court-martial (SCM) and waive your right to an administrative discharge board (ADB) in exchange for your Battalion Commander's agreement to not refer the charge of violation of Article 112a, wrongful use of a controlled substance, to Special court-martial (SPCM). Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such an agreement. You were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse and waived your rights to submit a statement or have your case heard by an ADB. On 13 October 2007, you pleaded guilty at SCM to wrongful use of marijuana and were sentenced to reduction in rank to E-1, forfeitures, and confinement. On 18 December 2007, you were offered, and refused, screening or treatment for substance abuse. Subsequently, the separation authority directed your discharge with an OTH characterization of service and you were so discharged on 31 January 2008.

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 change your discharge characterization of service and your contentions that you served honorably in combat, your marijuana use was due to undiagnosed PTSD and traumatic brain injury (TBI), and the Department of Veterans Affairs (VA) has determined your service Honorable for VA purposes. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, your statement, and the VA decision letter you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 28 July 2025. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and other mental health concerns during military service, which may have contributed to the circumstances of his separation.

In June 2007, [Petitioner] reported mental health symptoms during his post-deployment evaluation. He endorsed "nightmares; intrusive thoughts of combat situations; hypervigilance; anhedonia/decr[eased] motivations...not reporting combat stress/mood sxs [symptoms] of sufficient severity/duration to require tx [treatment]; not requesting tx at this time."

Petitioner has been granted service connection for PTSD (also claimed as depression), effective December 2018.

During military service, the Petitioner reported some mental health symptoms consistent with PTSD, but he did not receive a formal diagnosis. He has been

granted service connection for PTSD from the Department of Veterans Affairs (VA). It is possible to consider UA and marijuana use as behavioral indicators of avoidance symptoms present in undiagnosed PTSD. It is difficult to attribute his promotion delay to mental health symptoms, as the fitness failure occurred prior to deployment. The Petitioner has provided no medical evidence of TBI.

The AO concluded, “There is in-service evidence of some mental health symptoms following combat deployment. There is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI. There is insufficient evidence that all of his in-service misconduct may be attributed to PTSD or another mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. 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. Furthermore, the Board 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, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. Therefore, after the application of the standards and principles contained in the Wilkie Memo, the Board found that your service fell well below the minimum standards for a General (Under Honorable Conditions) or Honorable characterization of service.

Further, the Board applied liberal consideration to your claim that you suffered from a mental health condition and TBI, and to the effect that these conditions may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. Conversely, the Board found no evidence to support your claim of TBI. This conclusion is supported by the AO and your in-service medical records. Nonetheless, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition or TBI. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. 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, 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,

10/16/2025

