DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[redacted]
Docket No. 4952-25
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 15 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). The Board also considered the advisory opinion (AO), furnished by a qualified mental health professional, that 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 commenced active duty on 21 July 2008. On 24 April 2009, you were found guilty at Summary Court Martial (SCM) of wrongful use of marijuana.

Consequently, you were notified of pending administrative separation processing with an under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 13 July 2010.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your initial request for an upgrade, on 10 April 2013, based on their determination that your discharge was proper as issued. You subsequently requested a personal appearance hearing with the NDRB where you again requested a discharge upgrade. The NDRB denied your second request, on 11 May 2015, based on their determination that your discharge was proper as issued. As part of your testimony to the NDRB, you admitted to pre-service drug abuse and failing to disclose that history during your enlistment processing. You also admitted to using Spice on multiple occasions while on active duty, in addition to your marijuana use.

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 change your reason for separation. You contend the allegations against you represent a one-time departure from your otherwise respectable service, your mental health conditions impacted the circumstances of your discharge, you have demonstrated laudable post-discharge conduct, the severity of your misconduct was a minor a single positive drug test for marijuana, military and societal views of marijuana use have evolved over the years, both of your NDRB denials came before the Kurta memo, and if you were to commit the same offense today, although it is still against the UCMJ, it is reasonable to believe you would receive a lesser punishment. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, your statement, advocacy letters, post-service medical and mental health records, disability benefits questionnaire medical opinion, NDRB reports, and post-service certifications and continuing education documentation 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 13 August 2025. The AO stated in pertinent part:

> Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to the circumstances of his separation.
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> In March 2009, the Petitioner was evaluated by his primary care doctor for increased depressive symptoms. He was referred for evaluation by a military psychiatrist.
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> In April 2009, he was diagnosed with Depression NOS (not otherwise specified) by a military psychiatrist, who prescribed medication treatment. He was convicted via summary court martial of wrongful use of marijuana. In June 2009, the

> Petitioner was formally counseled regarding wrongful use of a controlled substance.
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> In July 2009, the Petitioner returned for follow-up with the psychiatrist. He reported discontinuing the medication treatment after three weeks due to intolerable side effects. His diagnosis was revised to Adjustment Disorder with Depression and Relational Problems with his wife. He "stated his wife was reportedly raped and he needed to get home to help her. He was refused any leave at that time."
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> In July 2010, he was discharged under other than honorable conditions. Service mental health records were not available for independent review. Cited service medical records were reviewed in Department of Veterans Affairs (VA) records. Petitioner provided evidence of character and post-service accomplishment. He submitted January 2013 VA records indicating that he was hospitalized involuntarily six times between May 2011 and August 2012 for psychosis and depression. VA records listed diagnoses of Schizoaffective Disorder, Unspecified and Generalized Anxiety Disorder. He has been granted service connection for Schizoaffective Disorder, effective July 2010. Petitioner reported "he hasn't used drugs since April 2011 except for the 'occasional pot.' Veteran disclosed using spice, a line of cocaine, and bath salts for about 2 weeks prior to April 2011."
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> The Petitioner has provided evidence that he was diagnosed with a mental health condition in military service. The VA has granted service connection for a mental health condition, effective from his discharge. There is evidence that the Petitioner sought some mental health treatment prior to his being identified as using marijuana. It is possible that his marijuana use may have been self-medication of those symptoms, particularly in light of personal stressors purported to be present at the time.

The AO concluded, "it is my considered clinical opinion that there is some in-service and post-service evidence from the VA of a mental health condition that may be attributed to military service. There is some post-service evidence that his misconduct may be attributed to a 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 admission of multiple Spice use while on active duty, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug offenses. 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 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.

Further, the Board was not persuaded by your argument that you made only one mistake and your service was otherwise respectable. Although one's service is generally characterized at the

time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. There is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, in your case, by your own admission, the Board found that you committed multiple incidents of drug abuse. When considering the additional incidents of drug abuse and your admission that you entered the Marine Corps fraudulently, the Board determined you were fortunate that your additional misconduct was not discovered prior to your discharge since it, more likely than not, would have resulted in a punitive discharge at a court-martial. Therefore, after the application of the standards and principles contained in the Wilkie Memo, the Board found that your reason for separation, assigned characterization of service, and reentry code remain appropriate.

Additionally, the Board noted the AO determination that there is some in-service and post-service evidence from the VA of a mental health condition that may be attributed to military service and some post-service evidence that your misconduct may be attributed to a mental health condition. The Board applied liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition 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. This conclusion is supported by the AO. However, even if your misconduct was attributable to your mental health conditions, the Board unequivocally concluded that the severity of your serious misconduct[1] 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 on your post-discharge accomplishments, 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

[1] By misconduct, the Board considered the drug abuse for which you were punished and the misconduct to which you admitted to committing that was not discovered.

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,

1/16/2026

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