



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

█
Docket No. 5171-25
Ref: Signature Date

█
█
█
█
█

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 23 January 2026. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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)¹. Additionally, the Board also considered an advisory opinion (AO), furnished by qualified mental health provider, that was considered favorable to you.

You previously applied twice to this Board for a discharge upgrade and were denied on 6 March 2023 and 14 July 2023. In this Board's initial denial, it determined, in part, that you were not discharged based on your sexual orientation and that aggravating factors existed in your record.

¹ The Board noted Petitioner checked the "DADT" box on his application and raised mitigation issues related to the policy. However, since Petitioner did not contend he was discharged due to his homosexuality, the Board did not consider the policy guidance applicable to the repeal of the "don't ask, don't tell," (DADT) policy.

Therefore, the Board concluded you did not qualify for relief under the “don’t ask, don’t tell,” (DADT) repeal guidance. The AO drafted for this petition concluded by opining, “There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.” In your second petition, you had argued and contended, in part: (a) you served as a gay man in the Marine Corps (USMC) under the DADT policy and such policy caused you great anxiety on active duty, (b) you fully accept that you made a very wrong decision to use “meth” on active duty, but you believe the DADT policy caused your untreated anxiety and depression to affect your judgment, (c) your untreated anxiety and depression for fear of being outed as a gay man affected your judgment in doing meth on active duty, (d) you should have been given an opportunity for treatment, but the DADT policy prevented you from seeking mental health treatment because DADT would have affected your ability to serve in the USMC, (e) it took many years for you to seek treatment after getting out of the USMC and to openly talk about that moment in your life, and (f) you were not able to seek mental health treatment or even try to explain your behavior without telling the USMC you were gay, which in turn would have got you kicked out of the service. However, the Board concluded, inter alia, that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the drug-related misconduct that formed the basis of your discharge. The summary of your service remains substantially unchanged from that addressed in the Board’s previous decision.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your non-judicial punishment. While the Board carefully considered your contention for mitigation, the Board noted you did not deny committing the misconduct. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and were properly separated with an OTH characterization of service.

Because you raised the issue of mental health, the Board requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 3 September 2025. The AO stated in pertinent part:

There is no evidence he was diagnosed with PTSD or another mental health condition during military service. Temporally remote to his military service, the Petitioner has received a diagnosis of PTSD from civilian providers that may be attributed to military service. A civilian psychologist has considered that the Petitioner’s in-service misconduct was due to undiagnosed symptoms of PTSD related to a chronic fear of harm that he may incur if his sexual orientation was disclosed. It is possible that his substance use may be attributed to this. Although the Petitioner had a history of pre-service marijuana use, he claims that his marijuana use was related to his pre-enlistment lifestyle and band participation and that his marijuana use ended with enlistment. It is possible that his in-service use

may be considered a behavioral indicator of undiagnosed PTSD and an attempt at medication of sleep difficulties associated with PTSD.

The Ph.D. concluded, “it is my considered clinical opinion that there is post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service. There is some evidence from a civilian provider that his misconduct may be attributed to PTSD.”

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 and your post-service mental health diagnosis. However, the Board disagreed with your contention that serving as a gay man during the DADT policy era was a stressful event for the purposes of conceding a stressor that contributed to, and/or resulted in, you suffering from PTSD and/or other mental health conditions². The Board determined that while the DADT policy could have influenced the behavior and treatment by superiors and/or fellow service members, an actual incident or event, such as specific treatment or threat, would be necessary to constitute a personally traumatic event³. The Board further determined that while the DADT policy potentially created an unfair and discriminatory environment for you as a homosexual, it did not rise to the level of a military sexual trauma-related event/stressor. Moreover, the Board noted that you were a prolific pre-service drug user who admitted to abusing marijuana more than 72 times prior to enlisting⁴. The Board considered that all of your pre-service drug abuse was prior to any “traumatic” events you experienced while on active duty. Therefore, even applying liberal consideration, while the Board acknowledged the AO’s conclusion that your post-service medical evidence attributes your in-service drug abuse to PTSD, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and determined that your in-service drug abuse was simply a continuation of your extensive pre-service marijuana use.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of your service, to include service highlights, the non-violent nature of your misconduct, your contentions regarding the “trauma” you experienced as a result of your sexual orientation, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your post-

² The Board noted that VA regulations do not permit the establishment of a stressor in PTSD claims solely based on a policy, as outlined in 38 C.F.R. § 3.304(f). Similarly, VA does not recognize or concede personally traumatic events based on service time frames or policies alone.

³ A PTSD stressor is a traumatic event (or series of events) in which an individual has been personally, or indirectly, exposed to actual or threatened death, serious injury, or sexual violence. The Board noted that you did not substantiate that you personally experienced any abuse, harassment, and/or assault due to your sexual orientation.

⁴ Your last use reportedly occurred approximately two months prior to your commencement of active duty.

service record of accomplishments, your remorse, your service to your community, the character references you provided for review, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board considered 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 War regulations and not permitted for recreational use while serving in the military. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice.

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,

1/29/2026

