



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

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Docket No. 5281-25

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 the 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, 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)/mental health condition (MHC) (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 on 12 September 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 16 November 2005. On 20 February 2009, you were counseled concerning illegal drug involvement and possession of steroids. You were advised that process for administrative separation is mandatory. On 25 February 2009, you received nonjudicial punishment (NJP) for wrongful possession of a controlled substance-steroids. On 8 May 2009, you were counseled concerning your illegal drug involvement after you tested positive for a controlled substance-marijuana. On 14 May 2009, you were convicted by summary court martial (SCM) for wrongful use of a controlled substance-marijuana. You were sentenced to reduction in rank, restrictions, and forfeiture of pay. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and pattern of misconduct; at which point, you decided to waive your procedural rights. Your commanding officer recommended you be discharged with

an Other Than Honorable (OTH) discharge characterization of service and the separation authority approved the recommendation by reason for drug abuse. On 21 July 2009, you were so discharged.

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 and contentions that: (a) upon completion of two combat tours, you were struggling with symptoms of undiagnosed PTSD, (b) you did not know what was wrong with you but wanted relief, (c) instead of swallowing your pride, you decided to turn to cannabis, (d) you regretted your decision on a daily basis, and (e) since your PTSD diagnosis, you are seeking a discharge upgrade so that you may have access to Department of Veterans Affairs benefits available to combat veterans. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and copies of your medical records.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for mental health treatment and properly evaluated during military service. His mental health condition (depression) was attributed to personal stressors incurred due to family issues during his military service, not to his combat deployment. Temporally remote to his military service, the VA has granted a diagnosis of PTSD. There is insufficient information regarding the purported traumatic precipitant in the medical record, but the Petitioner claims that it is related to combat exposure. Although there is some indication in the service record indicating that the Petitioner may have self-medicated symptoms of depression with marijuana, it is difficult to attribute steroid abuse to a mental health concern. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from the Petitioner of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that the Petitioner's misconduct may be attributed solely to mental health concerns."

After thorough review, the Board concluded these 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 included drug related offenses. The Board determined that illegal drug use and possession 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 considered the likely negative effect your conduct had on the good order and discipline of your unit.

Further, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed solely to mental health concerns. 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 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. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and recognized the same concerns raised in the AO. 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.

Finally, 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 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 the 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,

1/6/2026

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Executive Director

Signed by: █