



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

██████████
Docket No. 7233-25
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.

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 reconsideration application on 10 April 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). Additionally, the Board considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so. The Board also considered an AO from Headquarters, U.S. Marine Corps (HQMC).

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 previously applied to this Board for removal of your court-martial conviction and

reimbursement of transportation costs associated with your medical care. On 14 January 2015, the Board denied your request after determining it lacked the authority to remove court-martial conviction or grant reimbursement for travel costs for medical appointments. It also determined there was insufficient evidence of error or injustice to merit any change to your record. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision. The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the U.S. Marine Corps and began a period of active duty service on 17 July 2006. Your enlistment physical examination, on 29 December 2005, and self-reported medical history both noted no psychiatric or neurologic conditions, history, or symptoms. As part of your enlistment application, on 4 July 2006, you signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs."
2. On 21 January 2010, your command issued you a "Page 11" counseling warning (Page 11) documenting a recent allegation against you regarding spousal abuse. The Page 11 advised you that a failure to take corrective action or any further allegations of physical, verbal or psychological abuse may result in judicial or adverse administrative action, including but not limited to administrative separation. You did not elect to submit a Page 11 rebuttal statement.
3. On 6 May 2010, you received non-judicial punishment (NJP) for failing to obey a lawful order and for three (3) separate specifications of unauthorized absence (UA). You did not appeal your NJP.
4. On 20 January 2011, you received NJP for another UA. You did not appeal your NJP.
5. On 16 July 2010, you were erroneously issued a Certificate of Release or Discharge from Active Duty (DD Form 214) indicating you were released from active duty at the completion of your required active service obligation when you were actually placed on legal hold due to a pending criminal investigation that resulted in court-martial charges.
6. On 7 November 2011, pursuant to your guilty pleas, you were convicted at a General Court-Martial (GCM) of: (a) conspiracy to wrongfully distribute a controlled substance (oxycodone), (b) violating a lawful general order by wrongfully possessing "spice," (c) the wrongful possession, use, and distribution of oxycodone, (d) the wrongful possession of marijuana, (e) larceny, and (f) two (2) separate specifications of wrongfully soliciting someone to commit an offense. The Court sentenced you to confinement for three (3) years, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Dishonorable Discharge (DD).
7. On 29 February 2012, the Convening Authority approved the GCM sentence as adjudged. However, on 8 March 2013, upon the completion of GCM appellate review in your case, you were discharged from the Marine Corps with a Bad Conduct Discharge (BCD) and assigned an RE-4 reentry code.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

1. You were honorably discharged on 16 July 2010 upon the expiration of your enlistment.
2. The VA determined you were ineligible for their services based on your discharge characterization.
3. You took full responsibility for what happened from taking the medication because your fears became your reality.
4. From August 2010 to March 2013 your life was completely upside down.
5. You are not asking for anything you do not rate.
6. You are just asking for help to have somewhat of a bright future with hope for the honorable active-duty service to your country.
7. All conditions were originated from a combat deployment resulting in PTSD-TBI.

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

The Board initially concluded you were appropriately discharged based on your GCM conviction and sentence. However, because you contend you were discharged and later returned to active duty, HQMC reviewed your contentions about being honorably discharged in July 2010. It issued an AO on August 2025 and the Board considered the AO. The AO stated in pertinent part:

Records show [Petitioner] was retained past his End of Active Service, due to being subject to an investigation which resulted in charges being preferred for violation of Articles 81, 92, 112a, 121, and 134 of the Uniform Code of Military Justice. The alleged misconduct occurred between approximately 1 November 2008 and 28 February 2011. In accordance with paragraph 1008.1.b.(1) in [MCO P1900.16F], "Those personnel to whom jurisdiction has attached by commencement of action with a view to trial, as by apprehension, arrest, confinement, or filing of charges, before release from active duty, may be retained on active duty..."...Jurisdiction was so attached as his case was referred to a General Court-Martial...A DD Form 214 was created and erroneously issued on 29 June 2010 due to administrative oversight by the unit. A corrected DD Form 214 reflecting the outcome of the General Court-Martial was properly issued on 10 May 2013.

Based on a review of your record, the Board concurred with the AO that your command properly placed you on "legal hold" and thus maintained continuous jurisdiction over you with a view to taking you to trial for certain offenses, which ultimately occurred with your November 2011

GCM conviction. Further, the Board noted you do not deny committing the misconduct that formed the basis of your GCM conviction and punitive discharge. Finally, the Board considered your GCM conviction and sentence were finalized after appellate review, which did not identify any jurisdictional issues with the GCM. Therefore, the Board determined you were never discharged prior to your GCM conviction and the presumption of regularity applies to your GCM conviction and sentence. Thus, the Board concluded no error exists with your record.

However, because you now raised the issue of mental health, the Board also requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 12 December 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. However, there is evidence that he was referred for evaluation for TBI and possible symptoms of PTSD following military combat. The Petitioner has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given his claims that his NJP was erroneous. While substance use and UA may be considered behavioral indicators of avoidance or self-medication consistent with TBI or PTSD, it is difficult to consider conspiracy, solicitation, and distribution of controlled substances as a symptom of PTSD or TBI, given the level of planning and executive functioning required to complete those tasks.

The Ph.D. concluded "Based on a review of all available evidence, it is my considered clinical opinion that there is some in-service evidence and post-service evidence from the Petitioner of diagnoses of PTSD and TBI that may be attributed to military combat. There is insufficient evidence that his misconduct may be attributed to PTSD or TBI."

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 service medical record. 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. 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, as evidenced by your GCM conviction, more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying 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, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests

of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service to include service highlights, your need for veterans' benefits, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your mental health issues, the harshness of your punishment, the evidence you provided in support of your application, 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 determined that illegal drug possession, distribution, and use is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The severity of your drug related offenses were so aggravating that, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. The Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your punitive discharge. 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. 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, ultimately, the Board concluded an upgrade of your discharge characterization of service is not 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,

4/14/2026

1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.