



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD  
ARLINGTON, VA 2220

█  
Docket No. 8235-25  
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 March 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 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 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)/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 6 January 2026. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 Marine Corps and began a period of active duty on 24 May 2005. As part of your enlistment processing, you admitted preservice use of marijuana and received a waiver.

2. Between 8 March 2006 and 29 September 2006, you deployed in support of █  
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3. On 1 February 2007, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. As a result, you were processed for administrative separation for drug abuse and recommended for discharge with an Other Than Honorable (OTH) characterization of service.

4. On 10 July 2007, the separation authority approved your separation with an OTH characterization of service but, subsequently, ordered your separation suspended for a period of twelve months.

5. Between 31 July 2007 and 30 January 2008, you again deployed in support of █  
█.

6. On 25 March 2008, you participated in a urinalysis that resulted in a positive sample indicating marijuana use. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, you exercised your rights to consult with counsel and submit a rebuttal statement. In your statement, you deny marijuana use since you were granted a suspension of your separation.

7. On 22 April 2008, your commanding officer recommended that your suspended discharge be vacated as a result of your positive urinalysis.

8. On 30 April 2008, you received a second NJP for wrongful use of a controlled substance.

9. On 19 May 2008, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 30 May 2008, you were so discharged.

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 record of misconduct. While the Board carefully considered your contention for mitigation, the Board noted you did not deny committing the misconduct that formed the basis for your administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you raised the issue of mental health, the Board also requested an AO. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on a number of occasions, including during an extended course of prevention treatment. The absence of formal mental health

diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. Temporally remote to his military service, the VA has granted service connection for PTSD and other mental health concerns, attributed to combat service. Unfortunately, it is difficult to attribute the Petitioner's misconduct to undiagnosed symptoms of PTSD, particularly given pre-service marijuana use that appears to have continued in service and the Petitioner's denial of substance use in service. 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 post-service evidence from the VA of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or other 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 and the post-service Department of Veterans Affairs service connected findings. 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 more than outweighed the potential mitigation offered by any mental health conditions.

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, your contentions, the totality of your service, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, your rehabilitation efforts, your mental health issues, 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 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. The Board observed you were given multiple opportunities to correct your conduct

deficiencies but chose to continue to commit misconduct, which led to your OTH 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. Additionally, the Board was unable to reconcile the inconsistencies in your in-service statement denying culpability for abusing marijuana in 2008 and your current argument that your drug abuse was the result of your mental health issues at the time. Based on this discrepancy, the Board questioned your candor and/or reliability of recall in this matter. Finally, even taking into consideration your youth and immaturity, the positive aspects of your service including two deployments in support of OIF, and your mental health issues, the Board found that your two instances of wrongful use of a controlled substance while on active duty outweighed the mitigation evidence offered. Ultimately, the Board determined you already received sufficient clemency when your original OTH separation was suspended by the Marine Corps.

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,

3/19/2026

