



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

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Docket No. 8957-25
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.

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 10 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 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)/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 an advisory opinion (AO) furnished by a qualified mental health professional on 16 January 2026 and your response to the AO.

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 entered active duty with the Marine Corps on 4 August 2003.
2. On 14 August 2006, you were counseled on your failure to properly maintain your body composition.
3. On 11 July 2007, you were counseled that you were not recommended for promotion because of your lack of leadership and initiative.

4. On 13 August 2007, you were not recommended for promotion due to your failure to complete required professional military education.
5. On 28 September 2007, it was reported that you tested positive for marijuana.
6. On 10 January 2008, a summary court-martial (SCM) convicted you of wrongful use of marijuana.
7. On 8 February 2008, you received a substance abuse screening and refused treatment.
8. Consequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you elected to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service.
9. The SA approved the CO's recommendation, and you were so discharged on 18 March 2008.

In your application to this Board, you express a desire for your discharge character of service be upgraded and your paygrade to E-4 be reinstated. You contend that:

1. Your drug abuse was the only mistake you made in your Marine Corps career.
2. You received disproportionate punishment for your misconduct.
3. You were struggling with post-traumatic stress disorder (PTSD) and did not need such severe punishment.
4. Post-service, you were arrested for drug related misconduct but entered into a diversion program.
5. You have since achieved sobriety and exhibited good character in attaining personal and professional accomplishments.

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 admitted to committing the misconduct that formed the basis of 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 requested an AO. As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with or suffered from PTSD while in service. He indicated that he also received a civilian conviction for selling marijuana. He submitted post-service evidence of a diagnosis of PTSD. It is possible that he was using marijuana to aid sleep or in suppressing PTSD symptoms; however, repetitively engaging in the misconduct after being counseled and testing positive a second time exceeds that of what would be expected to be caused by PTSD alone. Engaging in monetary transactions regarding selling marijuana is not a behavior that can be said to be caused by PTSD symptoms. Additional records (e.g., active-duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The AO concluded, "Based on the available evidence, it is my clinical opinion that there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence that *all* of his misconduct was caused by PTSD symptoms." (Emphasis in original)

In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 diagnosis of PTSD and substance abuse. 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. While the Board acknowledged the AO's conclusion that your in-service drug use could be related to your PTSD condition, the Board ultimately determined insufficient evidence exists to make that determination. In reaching this conclusion, the Board noted that you continued with your drug abuse after your separation from the Marine Corps and even engaged in drug distribution. This led them to conclude your in-service misconduct was not an isolated event that could be tied to your PTSD condition.

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, the negative effect your discharge has had on your life, your mental health issues, your rehabilitation efforts and post-service accomplishments, 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, 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. Therefore, 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. 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. Thus, 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. 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 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,

3/25/2026

