



warning (Page 11) documenting your NJP. The Page 11 warned you that a failure to take corrective action could result in judicial or adverse administrative action, including administrative separation. You did not make a Page 11 rebuttal statement. On 12 July 2005 you received a Page 11 warning for illegal drug use. The Page 11 warned you that processing for administrative separation due to drug abuse is mandatory. You did not make a Page 11 rebuttal statement.

On 12 October 2005 pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) for the wrongful use of marijuana and operating a vehicle while intoxicated (DWI). You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for thirty days, hard labor without confinement for ninety days, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). Ultimately, upon the completion of appellate review of your case, on 29 September 2006 you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

On 28 August 2008 the Naval Discharge Review Board (NDRB) denied your application for relief. The NDRB determined your discharge was proper as issued and no change was warranted.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 4 March 2022. The Ph.D. initially observed that your in-service records do not contain evidence of a mental health diagnosis, but that evidence submitted by you supported post-discharge diagnoses to include PTSD. The Ph.D. determined that your pre-deployment misconduct in 2003 and 2004 and the failure to remove a lip ring would not be attributable to PTSD. The Ph.D. determined that although it could not be said with absolute certainty, your DWI and marijuana use *may* be attributable to your PTSD. The Ph.D. concluded by opining that there was evidence you exhibited behaviors associated with PTSD on active duty and that some, but not all, of your misconduct *may* be mitigated by PTSD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to your contentions that: (a) you are seeking a discharge upgrade to you will be able to receive service-connected disability benefits; (b) you suffer from PTSD brought upon by your Operation Iraqi Freedom in 2004; (c) at the time you were smoking marijuana it was because you were trying to cope with the pain you went through while serving overseas; (d) you were also promised a pardon of your BCD if you produced a documentary about abusing drugs and alcohol but your command denied it; and (e) you did not know you had PTSD at the time and instead of giving you help the military punished you. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful

events you experienced and their possible adverse impact on your service. However, the Board concluded despite the AO that there was no 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 misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms, and even if your misconduct was somehow attributable to any mental health conditions, the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service. The Board also 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.

Additionally, the Board noted that the SPCM military judge recommended on the record that the Convening Authority (CA) suspend your BCD if you produced a film *meeting the satisfaction of the CA* about the consequences of drug use by Marines. However, the Board observed that on 2 February 2006 the CA reviewed your film and denied your clemency request. The Board noted that the CA determined your attempt in making the film was not serious, the film was not timely submitted, and the film fell significantly short of its intent.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was 3.5 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your post-service



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conduct and accomplishments; however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances 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,

3/21/2022



Executive Director

