



further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation. However, on 14 January 2002 a Navy Drug Laboratory message indicated you tested positive for marijuana at over twice the Department of Defense testing minimum cutoff level.

On 18 January 2002, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit a written statement to the separation authority, and to request an administrative separation board. In the interim, on 23 January 2002 you received non-judicial punishment (NJP) for the wrongful use of a controlled substance. You did not appeal your NJP. Ultimately, on 13 February 2002, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 26 March 2020, the VA granted you a service-connection, for treatment purposes only, for PTSD (also claimed as █). 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 initial AO dated 2 April 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms indicative of a diagnosable mental health condition. Additionally, the OMPF documented four UA's (late for work ranging from 15 minutes to an hour and 15 minutes) with no other indication of occupational dysfunction. Although Petitioner provided documentation he is service connected for treatment of PTSD, he did not provide clarifying information about the trauma related to his PTSD (i.e., when the trauma occurred, symptoms experienced). The lack of clarifying information did not provide enough markers to establish an onset and development of mental health symptoms during military service. Furthermore, there was no nexus established between his in-service misconduct and postdischarge diagnosis of PTSD.

The Ph.D concluded, "[b]ased on the available evidence, it is my considered clinical opinion, that there is insufficient evidence to establish if Petitioner's PTSD can be attributed to military service or if his in-service misconduct can be attributed to 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) you are requesting an upgrade so you can receive VA benefits and compensation of all service-related injuries, (b) a VA administrator informed you that you were improperly discharged and need an upgrade, and (c) you were improperly charged with misconduct. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 that there was no convincing evidence of any nexus between any PTSD 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 whatsoever. Moreover, even if the Board assumed that your drug-related misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful 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.

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 1.0 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 2.50 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct and unreliability.

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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, 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 NJP incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Additionally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

Lastly, 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. The Board carefully considered any matters submitted regarding your character, post-service 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. 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 clearly merited your receipt of an OTH. As a result, the Board did not find evidence to support a finding of an error, injustice, or clemency that warrants 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,

6/13/2022

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Executive Director

Signed by: █