



15 ng/ml. On 11 June 2002, you received non-judicial punishment (NJP) for dereliction in the performance of duties, the wrongful use of a controlled substance (marijuana), and for the misbehavior of a sentinel/lookout by sleeping on duty. You did not appeal your NJP.

On 8 July 2002, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You previously had agreed to waive your right to administrative separation board in return for the adjudication of your drug offense at NJP instead of at a Summary Court-Martial. Ultimately, on 18 October 2002, you were separated from the Marine Corps for misconduct with an Other Than Honorable (OTH) discharge characterization and assigned a RE-4B reentry code.

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 have suffered from mental health conditions since your discharge, and (b) the drug you used in service is now considered to be legal. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 23 May 2022. The Ph.D. stated in pertinent part:

During military service, he was diagnosed with an alcohol use disorder. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. Although there is evidence of problematic substance use, which is incompatible with military readiness and discipline, there is no evidence he was unaware of his misconduct or was not responsible for his behavior. He has provided no post-service evidence in support of his claims. Unfortunately, his statement is not sufficiently detailed to establish an alternate clinical diagnosis. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific self-medication role) would aid in rendering an alternate opinion.

The Ph.D. concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

In accordance with the Kurta, Hagel, 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 nexus between any purported 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, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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 far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. The Board also concluded that although you were diagnosed on active duty with an alcohol use disorder, the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise 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 3.7 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 conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

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. Moreover, the Board determined that illegal drug use by a Marine is contrary to USMC core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that while some states in the U.S. have legalized the recreational use of marijuana, the Department of Defense still prohibits marijuana use across the board in any form. 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 Marine. Lastly, 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH. Therefore, even in light of the Wilkie Memo and reviewing the record holistically, the Board concluded that your request does not merit upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

7/20/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]