

pay, reduction in rank and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 11 February 2009, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service. The Board also considered your contentions that the anxiety of the Marine Corps caused you to rely on "self-medicating" acts to avoid the undue stresses you were experiencing, your maturity level was not the greatest at that time, and you feel that had you been given a second "go at it," things may have turned out differently. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 July 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly given his pre-service history of substance use. Substance use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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 further concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Furthermore, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans'

benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO and determined there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. While the Board commends your post-discharge good character and accomplishments, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants 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 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,

9/15/2022

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Executive Director

Signed by: █