



On 24 May 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On the same day your command issued you a “Page 13” counseling warning (Page 13) noting certain deficiencies related to your UA. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 23 December 2004, you received NJP for the drunken operation of a vehicle (DUI). You did not appeal your NJP. On the same day, your command issued you a Page 13 counseling warning documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 15 January 2005, you received NJP for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

Following your NJP for the wrongful use of marijuana, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to request an administrative separation board. Ultimately, on 9 February 2005, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 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 are requesting an upgrade to receive VA home loan benefits because you are in the process of buying a house, (b) you have anxiety and are currently undergoing treatment with medical cannabis, and (c) your discharge was unjust because times have changed. 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 8 August 2022. The Ph.D. stated in pertinent part:

There is no evidence of a diagnosis of a mental health condition during military service. The Petitioner has provided medical evidence that is temporally remote to military service and appears unrelated. 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 Ph.D. concluded, “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 diagnosis.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant 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 that there was no convincing evidence you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or 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. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 17 May 2022 to specifically provide additional documentary material. The Board unequivocally 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 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 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 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 veterans' benefits, or enhancing educational, employment, or military enlistment opportunities. Lastly, 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. As a result, 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

9/26/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]