



no psychiatric or neurologic conditions or symptoms. You last reenlisted on 29 September 1997 for a period of five years.

On 24 August 1983, you received non-judicial punishment (NJP) for unauthorized absence (UA) and missing ship's movement. You did not appeal your NJP. On 31 August 1990, your command issued you a "Page 13" documenting the removal of a command advancement recommendation to first class petty officer (E-6) due to demonstrated unreliability in the performance of your duties.

On 3 November 1998, a Navy Drug Screening Laboratory message indicated your urine sample tested positive for marijuana. On 22 November 1998, your command issued you a "Page 13" documenting the removal of a command advancement recommendation to chief petty officer (E-7) due to the wrongful use of a controlled substance. On 23 November 1998, you received NJP for the wrongful use of marijuana. You did not appeal your NJP.

On 25 November 1998, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You elected to consult with counsel but waived your rights to submit statements on your own behalf and request an administrative separation board. Your commanding officer recommended your separation with a General (Under Honorable Conditions) (GEN) characterization of service, specifically citing your sixteen years of service and no prior NJPs or legal actions during your last enlistment. However, the Separation Authority (COMNAVPERSCOM) approved and directed an under Other Than Honorable (OTH) conditions characterization of service. Ultimately, on 24 December 1998, you were discharged from the Navy for misconduct with an OTH 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, your desire for a discharge upgrade and contentions that: (a) you believe you were unjustly punished after sixteen years of honorable and exemplary service, (b) you admitted under duress and mental anxiety to using marijuana to cope with your depression, (c) your mental health claims were disclosed while crying out to your recruiting station chief for psychiatric help, and (d) a discharge upgrade will allow you to avail yourself of the Department of Veterans Affairs assistance for your numerous mental health issues. 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 18 July 2022. The Ph.D. 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. 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. Additional records (e.g., 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, “[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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. 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 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. 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 23 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 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 also 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 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. Lastly, 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. 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,

9/7/2022

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Signed by █