



On 31 March 1988, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance. You did not appeal this NJP. On 14 June 1988, you were medically evaluated for substance dependence and it was determined that there was “no evidence of alcohol or drug related illness.”

On 10 August 1988, you had a one-day period of unauthorized absence (UA) from your unit. On 24 August 1988, you again went UA for a one-day period. On 26 August 1988, you received NJP for those two specifications of UA. You did not appeal this NJP.

On 7 September 1988, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. Ultimately, on 31 October 1988, you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4B reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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) your desire to upgrade your characterization of service, (b) your age at the time of your misconduct, (c) your contention that you were struggling with depression due to various life stressors, and (d) your efforts towards recovering from alcohol abuse. For purposes of clemency and equity consideration, the Board noted you did provide documentation related to your Department of Veterans Affairs application for services and 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 4 October 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred and properly evaluated during military service, and received no mental health diagnosis. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the evaluation performed by the provider. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct. 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 diagnosis 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.”

In response to the AO, you provided the aforementioned advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your positive drug test, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered

the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to the Marine Corps core values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. Further, 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 the stressful events occurring your life and their possible adverse impact on your service.

Ultimately, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was 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 symptoms. The Board noted that your pre-enlistment medical examination and self-reported medical history noted no psychiatric or neurologic 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 27 May 2022 to specifically provide additional medical documentation. The Board found that your active duty 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

11/30/2022

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Executive Director

Signed by: █