



reason of misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). On 3 August 2005, you were offered and accepted intensive outpatient treatment due to your drug dependence prior to your administrative separation. On 8 August 2005, you began your outpatient treatment; you were evaluated by the Substance Abuse Rehabilitation Program (SARP) advisor and found to have met the criteria for cannabis dependence. However, on 18 August 2005, you were determined to be a treatment failure due to not completing interventions, not attending alcohol anonymous (AA) meetings, and not following SARP treatment guidelines. On 31 August 2005, you received your second NJP for wrongful possession of alcohol and wrongfully consuming alcohol while in a restricted status. Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to drug abuse. On 26 October 2005, you were 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 and contention that you incurred an anxiety disorder due to the stressors of your job and field medic training, which contributed to your misconduct. Additionally, you assert the need for an upgrade to qualify for federal contracts. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 10 August 2022. The AO noted in pertinent part:

During military service, he was diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline, and considered amenable to treatment, depending on the individual's willingness to engage in treatment. There is no evidence that he exhibited any psychological symptoms or behavioral changes indicative of another mental health condition, or that he was unaware of his misconduct or not responsible for his behavior. 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., 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, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service, other than a substance use disorder. There is insufficient evidence his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact 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 also determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailor 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. Furthermore, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, other than a substance use disorder, and there is insufficient evidence your misconduct could be attributed to a mental health condition. Additionally, the Board took into consideration that, while facing separation, you failed out of rehabilitation treatment through actions consistent with your complete disregard for military authority and regulations. Finally, 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and desire to assist the community, 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,

10/14/2022

