



and larceny and misconduct due to drug abuse as evidenced by wrongful use of a controlled substance, to wit: marijuana and cocaine. 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). Your commanding officer (CO) then 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. Prior to the SA's decision, on 24 March 1988, you commenced a period of unauthorized absence (UA). The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. However, due to your UA status your administrative discharge was held in abeyance. On 12 July 1988, your UA status concluded upon your surrender to military authorities, totaling 110 days. On 3 November 1988, you were convicted by a special court-martial (SPCM) of UA totaling 110 days and wrongful use of cocaine. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 21 September 1989, 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and your contentions that: (1) your time in the military was the direct cause of the clinical depression that is diagnosed today; (2) because of the depression the military caused you, it forced self-medication through other outlets, as resources were not offered in time of your need; (3) you only did what you knew at that time, which was drugs and alcohol; and (4) you are presently, clean and sober, and have gone through rehabilitation over the years, employed with the post office and do volunteer work and give to the homeless. 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, a qualified mental health professional reviewed your request and provided the Board with an AO on 19 August 2022. The AO stated 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 willingness of the individual. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Post-service, he has provided evidence of a diagnosis of a mental health condition that is temporally remote to military service and does not appear to be related. Unfortunately, his personal statement and available records are insufficiently detailed to establish a nexus with his military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may 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. There is insufficient evidence his misconduct could be attributed to a mental health condition."

In response to the AO, you provided a statement that supplied additional clarification of the circumstances of your case.

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 NJP and 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. 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 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,

10/21/2022

