



On 17 October 1991, you received non-judicial punishment (NJP) for the wrongful use of marijuana. You did not appeal your NJP. On the same day, your command issued you a “Page 13” counseling warning (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and/or processing for separation. You did not submit a Page 13 rebuttal statement.

On 29 January 1992, your drug and alcohol evaluation noted that you did not meet the diagnostic criteria for alcohol dependency. The evaluation indicated that you were an alcohol abuser as well as an episodic marijuana abuser. You were recommended to attend Level II counseling/treatment program to address your alcohol abuse.

On 19 March 1992, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On 20 March 1992, your command issued you a Page 13 warning documenting your last two NJPs. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and/or processing for separation. You did not submit a Page 13 rebuttal statement. On 20 May 1992, you declined the drug/alcohol rehabilitation treatment offered to you prior to your discharge.

Subsequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, and for being an alcohol abuse rehabilitation failure. On 20 May 1992, you elected to waive your rights to consult with counsel, submit statements on your own behalf, and to request an administrative separation board. In the interim, on 29 May 1992, your separation physical examination and self-reported medical history both indicated no neurologic or psychiatric conditions or symptoms. Ultimately, on 30 June 1992, 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.

On 17 March 2020, this Board denied your initial petition for relief. You did not raise any mental health issues/contentions in your petition.

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 served your country during the Persian Gulf War, (b) you are not getting the help you need for your PTSD and other medical conditions, (c) you suffer from PTSD due to the time spent on active duty, and your civilian medical records support your PTSD diagnosis, and (d) you have been sober for over two years. 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 16 August 2022. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with alcohol use and substance use disorders, which appear to be a continuation of pre-service behaviors. Problematic alcohol use and substance use are incompatible with military readiness and discipline, and considered to be amenable to treatment, depending on the willingness of the individual. The evidence indicates that he was aware of his misconduct and responsible for his behavior during military service. Post-service, he has submitted evidence of a diagnosis of PTSD that has been attributed in part to military service. However, it is difficult to attribute his misconduct to unrecognized symptoms of PTSD, given the absence of reported symptoms during military service and eight years post-service. 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 post-service evidence of a diagnosis of PTSD that may be attributed in part to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

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 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, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.2 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

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,

10/11/2022

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Executive Director

Signed by: █