



processing that could result in discharge for drug abuse. In that request, you admitted to using marijuana at the age of 15 and went to “harder stuff” upon entering the Marine Corps. You also stated you had been abusing heroin for 5 months, off and on. You also admitted to doing mescaline and marijuana for a year and stated that you wanted to get off of them because you know what they will do to you but also wish right now you had some drugs. On 7 August 1975 you were issued a counseling warning stating you were being recommended for Undesirable Discharge. On that same day you escaped from your confinement escort. You were then placed back in to pretrial confinement on 20 October 1975. You then submitted a request for an administrative discharge under Other Than Honorable (OTH) conditions for the good of the service/separation in lieu of trial by court-martial. This request was to escape nine specifications of UA for a total of 157 days. You were afforded the opportunity to speak with legal counsel and it was explained to you, your rights and the consequences and loss of benefits resulting from an OTH. Subsequently you were discharged, on 24 December 1975, pursuant to your request with an OTH.

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 contentions that your service record will show you were experiencing untreated mental and behavioral health issues, you were not properly evaluated or treated, and that your personal shame of your unfair and biases discharge status has affected you. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, advocacy letters, or medical documents for their review.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 October 2022. The AO noted in pertinent part:

During military service, Petitioner was diagnosed with personality disorder and a situational reaction to confinement following his misconduct. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has provided no additional medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, as his mental health concerns appear to have developed in response to the negative consequences of 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 evidence of a mental health condition that may be attributed to military service (situational depression). There is insufficient evidence his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SPCM, and your request for separation in lieu of another SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. The Board noted you were UA for 245 days and you admitted to abusing drugs throughout your enlistment. Further, the Board noted you provided no evidence to substantiate your contentions. Additionally, the Board concurred with the AO that there is insufficient evidence his misconduct could be attributed to a mental health condition. Finally, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Marine Corps agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH (Undesirable) characterization. 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 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,

1/11/2023

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Executive Director

Signed by: █