



neurologic conditions, or other notable symptoms. You did not disclose a history of substance abuse on any of your medical screening forms.

On 4 August 2004, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a 3-day period of unauthorized absence. You did not appeal this NJP. You received an Administrative Counseling (Page 13), putting you on notice that you were being retained in the service, but that further deficiencies in your performance or conduct could result in disciplinary action and administrative processing. You signed the counseling and acknowledged that assistance was available through Chain of Command and/or Chaplain.

On 20 January 2005, you pled guilty at Summary Court Martial of violating UCMJ Article 86, for three specifications of UA (43 days, 31 days, and 13 days respectively) and Article 112(a), for the wrongful use of controlled substances (cocaine and marijuana) over the span of three months. You were sentenced to 30 days confinement, reduction in rank to E-1, and forfeitures of pay.

On 27 January 2005, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, pattern of misconduct, and commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Ultimately, on 15 March 2005, you were discharged from the Navy for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

Post-discharge, you applied to the Navy Discharge Review Board for an upgrade to your characterization of service and change your narrative reason for separation and reentry code. You were denied relief on 28 October 2019.

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, your desire for a discharge upgrade, change to your narrative reason for separation and reentry code. Additionally, the Board considered your contentions that: (1) your contention that the underlying basis of your separation was procedurally defective at the time of the discharge; (2) your contention that the adverse action, to include the administrative discharge, was unfair at the time; (3) your assertion that the OTH Discharge no longer serves a purpose and is therefore inequitable; and (4) you suffered from a mental health condition that may be related to your misconduct. For purposes of clemency consideration, the Board noted you did provide numerous character letters that detail your post-service accomplishments.

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:

There is no evidence that the Petitioner was diagnosed with a mental health condition in military service or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. On a medical note dated

March of 2020 from Marijuana Express MD, it is noted, "PTSD. While in the Military 2002, went to the Navy and then went to prison for 18 months. Too much aggressive field." This note is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct in 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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. The Board also considered your assertion that your recruiter assisted you in covering up your substance abuse problem in order to gain entry into the service. After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your NJP and Summary Court Martial, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense and numerous periods of UA. 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 Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Further, the Board highlighted that on the contrary, your substance abuse predated your service and you chose to continue your illegal behavior after entry. You have provided insufficient evidence in support of your claim that a mental health condition is linked to your time in service. On a medical note, dated March of 2020, from Marijuana Express MD, it is noted, "PTSD. While in the Military 2002, went to the Navy and then went to prison for 18 months. Too much aggressive field." This note is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct in service. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms.

The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board noted that your pre-enlistment medical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Your first act of misconduct, although uncharged, was fraudulent enlistment as evidenced by your failure to disclose your pre-service drug use and self-defined substance abuse problem. The Board felt that your ability to intentionally and willfully lie on your entrance application supported their conclusion that you were also mentally responsible for your misconduct and that you should be held accountable for your actions. 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.

The Board did not concur with the procedural errors and equity arguments that you raised. You assert that your discharge was procedurally defective at the time, specifically, that the command should have given you a warning and opportunity to “fix” the problems with your behavior. First, you were provided such an opportunity on 4 August 2004, when you received a Page 13 counseling and notice of support options. Second, based on the UCMJ Article 112(a) violation, processing for administrative separation is mandatory. Processing for misconduct based on commission of a serious offense does not require an opportunity for counseling prior to processing. Further, the time to raise these procedural argument would have been during the administrative separation processing. When notified that you were being processed for separation, you waived your right to consult with a qualified counsel, your right to submit a written statement, and your right to present your case in front of a board. You certified a complete understanding of the negative consequences of your actions and that characterization of service could be Under Other Than Honorable Conditions which might deprive you of virtually all veterans benefits based upon your enlistment.

You also contend that your OTH discharge has served its purpose. Although you believe that your discharge has served its purpose, the record shows a chronological history of your willful neglect of your duties and your lack of commitment that is required of all service members who serve in the U.S. Navy. One of the ways in which our service members are recognized for their overall performance is through their assigned characterization of service. Most service members serve honorably, and therefore earn their Honorable discharge characterizations. In fairness to those Sailors and Marines who served honorably, Commanders and Separation Authorities are tasked to ensure that undeserving service members receive no higher characterization than is due.

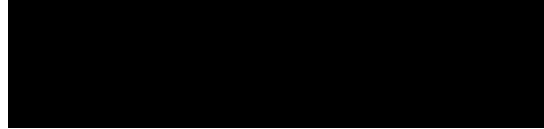
The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. While the Board commends your post-discharge accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, changing your reentry code, or granting relief 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,

12/14/2022



Executive Director

Signed by: █