



On 8 June 2001, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance. Prior to NJP, you declined your right to consult with qualified counsel. You did not appeal this NJP. On 28 June 2001, you were evaluated for substance dependence by a substance abuse counselor.

On 2 July 2001, you were given a Page 11 Administrative Counseling regarding your positive urinalysis for amphetamines and notified of your opportunity to submit a statement in your defense. You waived this right and chose not to make a statement. Ultimately, on 10 October 2001, you were discharged from the Marine Corps for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE- 4B reentry code.

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: (a) your desire to upgrade your characterization of service, (b) your contention that you were struggling with undiagnosed mental health issues during your service, and (c) the impact of your mental health on your conduct. For purposes of clemency consideration, the Board noted you provided documentation related to your post-service medical record.

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 18 October 2022. The Ph.D. noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with any mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The evidence submitted from Professional Medical Associates indicates 2 of 11 notes that reference mental health conditions. One note dated November 25, 2013 indicates diagnoses of HTN (Hypertension), GERD (Gastro Esophageal Reflux Disease), abdominal pain, ADD (Attention Deficit Disorder), Anxiety and Depression. A second note dated July 22, 2019 indicates, ADD, Diabetes, HTN, and Reflux Disease. In the medical summary it indicates that the Petitioner was diagnosed with Depression on January 21, 2019 and Major Depressive Disorder on August 27, 2020. Unfortunately, none of these records indicate an etiology or any history whatsoever regarding the diagnoses. Thus, it is not possible to provide a nexus between his post service diagnoses and 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 the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your positive drug test, outweighed these mitigating factors. 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 your mental health and the adverse impact that your mental health had on your service. The Board considered the seriousness of your misconduct and the fact that 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 determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that of the evidence submitted, only 2 of 11 notes reference mental health conditions. While records indicate that you were diagnosed with Depression on 21 January 2019 and Major Depressive Disorder on 27 August 2020, none of the records indicate an etiology or any history regarding the diagnoses. Thus, the Board could not identify a nexus between your post-service diagnoses and 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

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 or granting an upgraded characterization of service 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,

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