



After your first year of service, on 24 June 1998, you accepted nonjudicial punishment (NJP) for violations of Article 92, for drinking under the legal age, and Article 111, for operating a motor vehicle while intoxicated. You were subsequently counseled for your lack of maturity and leadership with additional concerns that you be at your appointed place of duty on time. You were counseled again for unauthorized absence (UA) and lack of maturity and judgment in August of 1998 and for additional UAs in September as well as falling out of a unit run after merely 100 meters. In January of 2000, you were counseled for yet another UA due to missing a scheduled dental appointment and for insubordinate conduct towards a noncommissioned officer. In February of 2000, you participated in a urinalysis which yielded positive results for marijuana use. On 7 March 2000, you pleaded guilty at a Summary Court-Martial (SCM) for violating Article 112a due to wrongful use of marijuana and two specifications of Article 86 for failing to go to your appointed place of duty at the prescribed time. While confined as part of your SCM sentence, you were further counseled for having refused alcohol rehabilitation treatment. You were again counseled, on 26 April 2000, regarding your illegal drug involvement and, although you again absented yourself on 20 December 2000, you were discharged on 16 January 2001 for misconduct due to drug abuse after having waived your right to a hearing before an administrative board.

You previously applied to the Naval Discharge Review Board (NDRB), contending that you had not received the help you had asked for and that youth and immaturity contributed to your misconduct. The NDRB denied your application, on 3 March 2011, after determining your discharge was proper as issued.

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 and your contentions that you turned to alcohol and cannabis to self-medicate after your child died and you were denied leave to return stateside for the burial. You also assert that, as a result of this traumatic event, your fiancé ended your engagement. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you also contend that post-traumatic stress disorder (PTSD) affected your discharge, the Board also considered the AO. The AO stated 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 claim. Unfortunately his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records, 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 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. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. Ultimately, the Board found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board concurred with the AO's conclusion that there is insufficient evidence of a mental health condition that may be attributed to your military service and insufficient evidence that your misconduct could be attributed to a mental health condition. Although you additionally contend that you were "allowed" to remain on active duty following your SMC, the Board found no evidence of material error or injustice in the processing of your administrative separation. Finally, the Board noted you provided no evidence in support of your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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 that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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: █