



review and final decision. Commanding General, ██████████ approved the recommendation, and you were discharged on 28 June 2013.

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 request to change your name on your discharge record, for which you contend that you have legally obtained a name change through the court system, and your desire to upgrade your discharge to “Honorable.” You contend that you desire to prove that you were a responsible Marine who served your country, that you have a healthy outlook as a veteran, and that you have received mental health care for several years and are finally in the right state of mind to merit an upgraded characterization and possibly receive veteran benefits. 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 a traumatic brain injury (TBI) affected the conditions of your discharge, the Board considered the AO. The AO stated in pertinent part:

The Petitioner claims that he suffered from symptoms of undiagnosed TBI, which contributed to his misconduct. On his discharge physical dated April 2013, it was noted that he complained of difficulties with memory, balance, sleep and headaches. The medical provider who completed the physical wrote, “Marine has not deployed or had TBI while in the Marine Corps. Reports history of head injury as a child. Ref(er) to TBI/neuro for further eval.” The Petitioner did not endorse any TBI/neurological symptoms on his enlistment physical, nor on the group life insurance election section 4 – health concerns. There is no evidence of a head injury or symptoms of undiagnosed TBI during military service. He has not provided any 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., 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 TBI that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a TBI.”

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it was 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 Spice use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board concurred with the AO and found insufficient evidence that your wrongful use of a controlled substance during your military service might be attributable to your contended TBI. With respect to your contentions of post-discharge character in light of having received mental

health care that you believe has had a positive effect on your state of mind, the Board found that your personal statement did not sufficiently elaborate upon the impact your improved state of mind has had upon your post-discharge behavior to determine that your discharge characterization amounts to an injustice. 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 granting you the relief you requested 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.

With respect to your request to have your name changed on your record, the Board noted that you did not submit any evidence of the court order which would substantiate this claim and, consequently, found insufficient evidence of either error or injustice with respect to the name currently recorded in your discharge. Accordingly, determined that your request for a name change also does not merit relief at this time. The Board encourages you to reapply once you have obtained the necessary evidence that would allow this Board to better evaluate whether an injustice exists in your record with respect your name.

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,

1/31/2023

