

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 10 July 2002 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct" your separation code is "HKK," and your reenlistment code is "RE-4." Your separation code indicates you were discharged for drug abuse.

You previously sought relief through the Naval Discharge Review Board and were denied relief on 31 October 2003.

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 or receive a medical discharge, (b) your assertion that your insomnia was an early symptom of Bipolar Disorder, (c) your contention that you asked for help and only resorted to cannabis to self-medicate, and (d) your argument that you should have been medically discharged. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your Department of Veterans Affairs (VA) rating, in-service medical documents, your mother's statement, and evidence of 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 November 2022. The Ph.D. noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed mental health conditions during service and that he had "asked for help for a year prior to his NJP." He submitted a letter from his mother as evidence who indicated that she observed her son with insomnia while on leave in 2001. The Petitioner submitted evidence from his medical record in service where he was seen repeatedly seen for complaints of insomnia. His provider continued to assess for collateral causes and noted no evidence of depression or anxiety. He was prescribed Benadryl and Restoril for his insomnia and referred for a sleep study. He also submitted paperwork on an application for temporary or extended mental health services in █, █. Dated June 2013. This paperwork indicates a diagnosis of Psychotic Disorder NOS (not otherwise specified), with observations of bizarre delusions, e.g., "that his leg needs to be amputated," disorganized speech and paranoid thoughts, and history of Bipolar." During the interview it was noted, "Patient remains bizarre, defecated on floor." Although there is no evidence that he was diagnosed with a mental health condition in military service, it is possible that his observed symptoms of insomnia may have been initial symptoms of psychosis or another mental health condition that hadn't yet fully come to fruition.

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 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. Specifically, the Board felt that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. 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 the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. Further, 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 self-medicating due to the onset of Bipolar Disorder. Ultimately, the Board concurred with the advisory opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. The Board acknowledged that while there is no evidence that you were diagnosed with a mental health condition while in military service, it is possible that your observed symptoms of insomnia may have been initial symptoms of psychosis or another mental health condition that hadn't yet fully come to fruition. However, the Board felt that you were being given thorough medical assistance related to the insomnia, to include medication, and therefore did not have to resort to "self-medication" through illegal drugs. The Board also highlighted that you had substantial marijuana use, to include an arrest, prior to service, which weakens your argument that your condition was service connected.

Not only did the Board feel that your mental health condition wasn't attributed to your military service, they also felt that there was insufficient evidence that your misconduct could be attributed to a mental health condition or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not 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 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.

Finally, the Board considered your request for a disability discharge and determined insufficient evidence exists to merit relief. As pointed out in the AO, it was determined that there was insufficient evidence that you suffered from a mental health condition attributable to your military service at the time of your discharge. In addition, the Board noted that you were ineligible for disability processing based on your misconduct that resulted in an OTH. 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,

1/5/2023

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Executive Director

Signed by: █