



You enlisted in the Navy and began a period of active duty on 10 February 1987. On 20 July 1988, you received non-judicial punishment (NJP) for two specifications of unauthorized absence, totaling eleven days and three specifications of absence from your appointed place of duty. On 3 August 1988, you received a second NJP for absence from your appointed place of duty and wrongful use of marijuana. Additionally, you were issued an administrative remarks (Page 13) retention warning. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 7 September 1988, you received a third NJP for absence from your appointed place of duty and wrongful use of marijuana.

Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of your procedural rights, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 3 October 1988, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

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 change your discharge character of service and contentions that you were experiencing significant anxiety regarding the health of your wife and unborn child, you did not mean to be disrespectful and believed you served honorably “other than that one incident,” while facing judicial punishment you should have been given the opportunity to have representation and/or rehabilitation to include mental health care, you had “one incident of drug use” and you were prematurely discharged, and you have been a productive citizen since leaving the Navy. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters, a resume, and certificates of accomplishment.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 8 February 2023. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use disorder diagnosis (marijuana abuse) was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Substance use is incompatible with military readiness and discipline. Unfortunately, he has provided no medical evidence to support his claims. While a high-risk pregnancy is a stressful event, there is insufficient evidence he was experiencing a clinical level of symptoms, given his denial of mental health symptoms during his separation physical. It is

difficult to attribute his substance use to a mental health condition, given his statement in service that his single use was recreational, which appears to be a continuation of pre-service behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. 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. Additionally, 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. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Furthermore, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. Your command was under no obligation to send you to drug rehabilitation treatment unless it was determined, by competent medical authority, that you were drug dependent and there is no documentation in your record that shows you were drug dependent. Finally, the Board 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

4/12/2023



Executive Director

