



Military Justice (UCMJ), Article 111, wrongfully controlling a vehicle, to wit: a passenger car, while the alcohol concentration in your breath was about .067.

On 17 April 2001, you were issued a Page 11 counseling concerning the Family Advocacy Case Review Committee's finding of substantiated Level III child neglect. On 26 June 2001, you were issued a Page 11 counseling concerning the Family Advocacy Case Review Committee's finding of substantiated Level III child abuse.

On 11 October 2001, you were convicted by a summary court-martial (SCM) of two specifications of unauthorized absence, totaling 29 days, physically controlling a vehicle while drunk, and wrongful use of marijuana. On 8 November 2001, you were received a medical evaluation and were diagnosed with marijuana and alcohol abuse, with additional information needed to rule out substance dependence.

On 28 November 2001, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct and drug abuse. On 12 December 2001, you were advised of your procedural rights; you elected to consult with military counsel and after consulting with military counsel, you waived your right 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 Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps. On 15 March 2002, you were discharged from the Marine Corps 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 your discharge was due to your poor decisions while under the influence of alcohol, the Marine Corps did not fail you, and you are currently sober. For purposes of clemency and equity consideration, the Board noted you provided documentation from the Department of Veterans Affairs, but no supporting documentation describing post service accomplishments or advocacy letters.

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 22 March 2023. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with alcohol and substance use disorders. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. There is no evidence that he was diagnosed with another mental health condition in military service. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records

(e.g., complete 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 SCM and counseling entries, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. 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 unit. Furthermore, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO noted, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. 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. Even in light of the Wilkie Memo and reviewing the record liberally and 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 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,

5/17/2023

