



specifications of false official statement, failure to go at the time prescribed to your appointed place of duty, and failure to go to your appointed place of duty.

On 9 January 2003, you were convicted by a summary court-martial (SCM) of wrongful use of marijuana. Based on a command referral, on 21 January 2003, you presented yourself to the Substance Abuse Rehabilitation Program (SARP) for evaluation. On 26 March 2003, it was determined that based on your lack of desire to participate in SARP you were refusing the opportunity for treatment.

On 6 May 2003, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were advised of your procedural rights; you waived your right 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 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 16 June 2003, 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 to a "Medical Discharge" and contentions that: (1) after your lower back injury you were unable to perform your duties, you feel that the people who were supposed to look out for you failed, and assumed that you were "quitting" or "giving up," (2) you felt that your brothers had turned their backs on you, you tried your best to redeem yourself, with injury and all and you were still looked upon as someone who had given up, and (3) before the injury you were one of the best in the world at your job and performed your duties to the letter. For purposes of clemency and equity consideration, the Board noted you did not provide 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 24 March 2023. The AO noted in pertinent part:

There is no in-service evidence of a head injury or on-going symptoms consistent with a Traumatic Brain Injury (TBI). The Petitioner's claims regarding the nature of his head injury are not specific to establish a nexus with his misconduct. There is no evidence of a diagnosis of PTSD or another mental health condition during military service, other than alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. The Petitioner has provided no medical evidence in support of his claims. Additional records (e.g., active duty or complete 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 considered clinical opinion there is insufficient evidence of TBI or PTSD incurred during military service. There is insufficient evidence his misconduct could be attributed to TBI, PTSD, or another mental health condition, other than his diagnosed alcohol use disorder.”

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 and SCM conviction, 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 TBI or PTSD incurred during military service, and there is insufficient evidence your misconduct could be attributed to TBI, PTSD, or another mental health condition, other than your diagnosed alcohol use disorder. 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. Therefore, based on your administrative separation processing for misconduct that resulted in an OTH characterization, the Board determined that you were ineligible for disability processing even if there was evidence to support your referral to the Disability Evaluation System. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant your discharge for drug abuse and 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,

5/31/2023

█

Executive Director

Signed by █