

willful disobedience of a senior non-commissioned officer, two specifications of dereliction of duty, two specifications of violating a lawful order, two specifications of making a false official statement, and two specifications of sleeping on post.

On 18 June 2004, you commenced a forty-eight-day period of unauthorized absence that concluded with your apprehension on 5 August 2004. You were placed in pre-trial confinement until your Special Court-Martial where you pleaded guilty to UA, wrongful use of marijuana, and larceny of an automobile of a value of more than \$500. You were sentenced to a Bad Conduct Discharge (BCD) and 12 months of confinement, which was reduced to 120 days per your pre-trial agreement. You were released from confinement on 8 November 2004, due to credit for time served, and placed on appellate leave. The Appellate court affirmed the findings and sentence of the SPCM and you were discharged with a BCD on 25 January 2007.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 6 November 2018, based on their determination that your discharge was proper as issued.

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 characterization of service and your contentions that you wish to receive help with your disabilities, that your mental illness sparked misconduct, that the harassment happened just before Iraq, while in MOS school, and you didn't report it because everyone seemed to think it was a big joke, that you were told nothing was wrong with your toes while having surgery on one nail, and that you think you should be receiving 100 % disability until your toe nails are completely healed. For purposes of clemency and equity consideration, the Board considered the personal statements you provided.

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 23 August 2023. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from any mental health concerns while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any 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 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, 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. 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given opportunities to address your conduct issues but you continued to commit misconduct. Additionally, 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, there is no evidence that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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. 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 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,

10/19/2023

