



On 20 March 2001, you received non-judicial punishment (NJP) for wrongful use of marijuana and were awarded forfeitures of pay, restriction, and extra duty. That same day, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 5 April 2001, you received NJP for two specifications of failure to go to restricted muster. On 9 April 2001, you refused drug and alcohol dependency screening. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 11 May 2001.

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 your medical condition impaired your judgement and you self-medicated with marijuana. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter you provided.

As part of the Board's review process, a qualified mental health professional reviewed your Contentions, the available records, and issued an AO dated 27 September 2023. The AO noted in pertinent part:

Petitioner contended that a medical condition contributed to mental health concerns in service, which he attempted to self-medicate with marijuana. Petitioner submitted evidence of a treatment regimen of medical marijuana for unlisted diagnoses from November 2022 to June 2023. He provided a statement of support from his spouse. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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., 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 NJPs, 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.

Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to your military service and insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in military service, that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, or that any concerns were raised regarding a mental health condition. Further, 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 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,

12/5/2023

