



substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained in your OMPF, you were found guilty of at least one drug offense and sentenced to reduction in rank to E-1, forfeitures of pay for four months, one hundred days of confinement, and a Bad Conduct Discharge (BCD). The findings and sentence were affirmed by the Navy and Marine Corps Court of Criminal Appeals (NMCCA) on 22 June 2001 and your further rights to appeal and review were satisfactorily discharged per Special Court Martial Supplemental Order 03-495, dated 24 February 2003. On 11 April 2003, you were discharged with a BCD.

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 suffered from PTSD and used cannabis to cope with the pain, you asked for help but instead received NJP and were sent to the Brig, you were sent to drug rehabilitation but not allowed to stay in the military as you desired, and you believe you are entitled to Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered your statement and noted that you provided advocacy letters that described post-service accomplishments.

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 12 February 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition 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 medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

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 concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, insufficient evidence that your misconduct could be attributed to a mental health condition, and that you provided no medical evidence to substantiate your contentions.

The Board inferred that your SPCM misconduct, when considered with any other aggravating or mitigating factors permitted before the court, was justifiably serious to warrant a punitive discharge, and determined your clemency matters were insufficient to outweigh the presumptive severity of that misconduct. 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 also considered the likely negative impact your misconduct had on the good order and discipline of your command. 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 an BCD characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character, 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,

4/8/2024

