



Unfortunately, the documents pertinent to your administrative separation proceedings are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your record shows that, on 2 March 2006, the separation authority directed your Other Than Honorable (OTH) discharge from the Navy by reason of misconduct due to drug abuse. On 16 March 2006, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 17 May 2011, 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 upgrade your discharge character of service and contentions that: (1) prior to the events of hurricane Katrina, you were an active member in the community, Sailor of the Quarter, and had exemplary evaluations, (2) leading to your OTH discharge you felt the need to smoke marijuana to help you sleep and cope with the nightmares that you were experiencing, and (3) you are under the care of a psychiatrist from the Department of Veterans Affairs for your diagnosis of PTSD, Bipolar Disorder, Insomnia, and Agoraphobia. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application, including your personal statement describing the circumstances of your case.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 4 June 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 symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., 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 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."

In response to the AO, you submitted additional supporting documentation that provided additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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, 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. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of mental health condition that may be attributed to military service or your misconduct. As the AO explained, your statement is not sufficiently detailed to provide a nexus with your misconduct, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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,

8/7/2024

