



non-judicial punishment (NJP) for unauthorized absence (UA) a period totaling 20 days. Additionally, you were issued an administrative remarks (Page 11) counseling concerning your violation of the Uniform Code of Military Justice (UCMJ), Article 86, Unauthorized Absence.

On 14 December 2006, you received non-judicial punishment (NJP) for wrongful use of cocaine and marijuana. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You waived your procedural right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer 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 directed your OTH discharge from the Marine Corps by reason of misconduct due to drug abuse and, on 15 February 2007, you were so discharged.

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) you made a poor judgment call and used drugs, (2) though the act saved your life, the mental anguish is crippling, (3) while “blackout drunk” you “smoked marijuana and did cocaine for the second time ever” in your life, and (4) you do not deserve the discharge that you received. 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, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 28 June 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. During military service, he also reported experiencing symptoms of Bipolar Disorder, which he did not disclose prior to enlistment. Unfortunately, he has provided no medical evidence to support his claims of PTSD. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than his diagnosed personality 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 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. 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 unit. Further, the Board concurred with the AO 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, other than your diagnosed personality disorder. As the AO explained, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. Additionally, you provided no medical evidence to support your claims of PTSD. Therefore, 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. Finally, the Board noted you were given an opportunity to correct your conduct deficiencies and chose to continue to commit misconduct.

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. 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. 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,

8/26/2024

