



Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You waived your procedural right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority directed your OTH discharge from the Navy by reason of misconduct due to drug abuse and, on 13 October 1997, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your requests for an upgrade, on 13 December 1999 and 10 March 2005, 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) you suffer from chronic depression that was not properly treated, (2) you had thoughts of self-harm and loneliness causing you severe depression, (3) you were told by a “shipmate” that if you claimed to have used marijuana, you would receive better care, (4) you were not informed that by claiming to use marijuana it would cause an automatic discharge, (5) you were misguided while in an unhealthy mental state, and (6) you never used marijuana while in the Navy nor since your discharge. 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 13 September 2024. The AO stated in pertinent part:

NDRB dated February 1999 indicates mental health visits in May 1997 and June 1997. Unfortunately, records of these visits are not contained in his available service record, however they note diagnoses of Adjustment Disorder with Depressed Mood as well as self-harm. Although these records are not available for review, it is possible that the Petitioner’s use of alcohol and marijuana were used in attempts to quell his depressive symptoms.

The AO concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient 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, 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. Further, despite the conclusion of the AO, the Board did not find sufficient evidence to establish any nexus between your mental health condition and the misconduct for which you were discharged. The Board did not question that you suffered from a mental health condition, but simply felt that it had insufficient information regarding the nature and manifestation of your condition upon which to draw any reasonable conclusions. Furthermore, the Board considered that you deny smoking marijuana, the misconduct you claim should be mitigated by your mental health condition. Finally, the Board took into consideration that, according to your separation documents, you were “incapable of adhering to the rules and regulations of the Navy and your command” and you were “unwilling to conduct yourself in a manner conducive to good order and discipline.

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. 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 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,

10/23/2024

