



Article 86, UCMJ. Additionally, Petitioner was formally counseled concerning his absence from his appointed place of duty.

On 2 January 2002, Petitioner was issued a Page 11 counseling concerning his lack of judgment. Specifically, speeding, not wearing his seatbelt, and reckless driving in a government vehicle. On 4 September 2003, Petitioner was convicted by a summary court-martial (SCM) of wrongful use of marijuana in violation of Article 112a, UCMJ. On 25 March 2004, Petitioner was convicted by a special court-martial (SPCM) of wrongful use of marijuana in violation of Article 112a, UCMJ. As punishment, Petitioner was sentenced to confinement and a Bad Conduct Discharge (BCD). Ultimately the BCD was approved at all levels of review and Petitioner was so discharged on 14 January 2008.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade Petitioner's discharge character of service to Honorable and contention that Petitioner suffered from PTSD due to the "Iraq War and Kuwait War." Additionally, the Board noted you checked the "PTSD" box on your application, but you chose not to respond to the Board's request to provide evidence in support of this claim. For purposes of clemency and equity consideration, the Board considered your statement and the documentation you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved multiple drug offenses. 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 negative impact Petitioner's conduct likely had on the good order and discipline of his unit. Further, the Board found that the record clearly reflected that Petitioner's active-duty misconduct was intentional and willful. Furthermore, the Board also determined that the evidence of record did not demonstrate that Petitioner was not responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board observed that Petitioner was provided an opportunity to correct his conduct deficiencies during his service; however, he continued to commit additional misconduct. Therefore, the Board concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects Petitioner's conduct during his period of service, which was terminated by his BCD.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered your statement and the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record 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 Petitioner's misconduct. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

The Board extends their condolences for your loss.

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,

1/16/2025

