



As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions noted above. According to the AO:

Petitioner contends he incurred a TBI and a mental health condition in-service, which may mitigate his in-service misconduct. Petitioner's in-service record documented diagnoses of mild concussion (3/81) and alcohol intoxication/head injury (12/81) but no pattern of medical complaints or presentations for care for residual symptoms attributable to TBI. Additionally, his record of performance and achievement in the six years following his head injuries indicated adequate military performance.

In-service, he was diagnosed with Paraphilia, Not Otherwise Specified and Borderline Personality Disorder. Both disorders could not be attributed to military service as a personality disorder is a life-long characterological condition arising in childhood-late adolescence and continuing through adulthood, and paraphilia (sexual deviance) typically arises from childhood/adolescent sexual experiences or trauma and manifests throughout adulthood (VA records indicated childhood sexual abuse). There was no other in-service clinical evidence of additional mental health conditions.

Petitioner provided post-discharge clinical records of diagnoses of Depressive Disorder, NOS; Cognitive Disorder, NOS; Paraphilia, NOS, in remission; and Personality Disorder, NOS, with Antisocial, Passive-Aggressive, and Schizotypal Features. The sexual disorder diagnosis was first documented in service, as was the personality disorder. The depressive and cognitive disorders first appeared in the outpatient records after 1996. Though Petitioner received treatment through the VA, these conditions were identified as service-connected. There was no evidence in the VA records establishing a nexus between his in-service misconduct and his postdischarge diagnoses.

The AO concluded, "[t]herefore, based on the available evidence, it is my considered medical opinion the preponderance of objective evidence failed to establish Petitioner suffered from a TBI or other mental health condition attributable to his military service, or his in-service misconduct could be attributed to TBI or other mental health condition."

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contentions noted above and your desire to upgrade your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and civil arrest, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined your conduct showed a disregard for military authority and regulations. Further, the Board concurred with the AO that there was insufficient evidence that your in-service misconduct could be attributed to TBI or other mental health condition. As a result, the Board concluded your conduct constituted

a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

6/15/2022

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Signed by: █