



punishment for a period of unauthorized absence. On 28 January 1975, you were issued a written counseling concerning your marks of 2.0 in professional performance and military behavior. On 10 February 1975, you received nonjudicial punishment for four different periods of unauthorized absence and for disobeying an order. On 6 March 1975, you were notified of the initiation of administrative separation processing for convenience of the government. On 7 March 1975, you were discharged with a general (under honorable conditions) characterization of service.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that the misconduct that you engaged in while on active duty should be mitigated by an undiagnosed mental health condition. In support of your contention, you state that you were diagnosed with █ in 2006, and you provided the findings of the U.S. Department of Veterans' Affairs (VA), which determined that you are have a one hundred percent service connected permanent total disability for █.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. The AO's initial review resulted in an unfavorable finding, explaining that "there is post-service evidence that he was diagnosed with a mental health condition after his military service, for which the VA has granted service connection. However, there is insufficient evidence that his misconduct could be mitigated by an unfitting mental health condition." In your 3 December 2021 response to the AO, you submitted a personal statement, historical records describing military policy and your performance, a statement of support from your spouse attesting to your mental health difficulties, medical records from 2008-2015, listing diagnoses of █ or acute █, and an August 2020 VA rating decision granting service connection for █. After reviewing your complete response to the AO, the preparer of the original AO explained that,

Petitioner provided new and material evidence in support of his claims, including medical records to support his claims of a diagnosis of █ from at least 2008. His personal statement contends that his auditory hallucinations onset during his military service. Although there is disagreement among VA examiners, it is possible that some of the Petitioner's misconduct and substandard performance, such as disobedience and perceived incorrigibility, could be attributed to observed odd behaviors that were unrecognized psychotic symptoms. However, it is difficult to attribute larceny to symptoms of █ based on the evidence.

The AO concluded, "based on the new evidence, there is post-service evidence that he incurred an unfitting mental health condition during military service. There is evidence that some of his misconduct could be mitigated by his mental health condition."

With respect to your request for a medical retirement or for a disability rating with retroactive compensation to the date of your discharge, the Board observed that, in order to qualify for

military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your case, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness. In your case, the Board concluded the preponderance of the evidence did not support a finding that your mental health condition met any of the criteria for unfitness at the time of your release from active duty. Further, the Board was not persuaded by the VA rating you provided since eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and without a requirement that unfitness for military duty be demonstrated.

To the extent your request sought an upgrade to your discharge characterization, based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO, that some of your misconduct could be mitigated by your mental health condition. The Board carefully considered the materials that you provided, including your rebuttal to the initial AO, and determined that, while some of the misconduct that you engaged in while on active duty may be mitigated by your mental health condition, not all of the misconduct may be so mitigated. In review of your entire submission, and in light of your four nonjudicial punishments for a variety of misconduct and written warnings, the Board determined that there was no error or injustice in the assignment to you of a general (under honorable conditions) characterization of service.

You are entitled to have the Board reconsider its decision upon the 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,

1/27/2022

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Executive Director

Signed by: █