



1986 followed by multiple decisions by this Board in 1990, 2002, 2006, 2009, 2012, and 2017. This Board's decision on 12 September 2017 was based, in part, on an advisory opinion from the Bureau of Medicine and Surgery that determined there was insufficient evidence that your claimed Post-Traumatic Stress Disorder (PTSD) contributed to your misconduct. On 7 November 2019, this Board again denied your request for relief, this time for disability benefits, based on a new argument that your personality disorder was not considered by the special court-martial.

The Board carefully considered your arguments that you deserve a change to your narrative reason for separation to disability. You included no new documentary evidence with your application but provided new arguments stating that you could not be trusted to remain calm under duress or stress due to your mental health condition at the time. You also asserted that you should have been discharged in the months prior to your court-martial conviction that resulted in your bad conduct discharge; implying that your Commanding Officer abused his discretion by referring you to a special court-martial instead of administratively separating you for your personality disorder. Unfortunately, the Board disagreed with your rationale for relief.

After reviewing the evidence in your case, the Board determined the preponderance of the evidence does not support relief and agreed with the rationale applied in its most recent decision to deny you disability benefits. Specifically, the Board found that you were appropriately discharged for misconduct based on your November 1981 special court-martial conviction that sentenced you to a bad conduct discharge. In making this finding, the Board relied on the 28 August 1981 mental health evaluation that concluded you were mentally responsible for your misconduct despite the existence of your personality disorder and the appellate review from your case that concluded no error exists with your conviction or sentence. In addition, the Board considered the advisory opinion from the previous case that concluded your post-discharge diagnosed PTSD did not contribute to your misconduct. Therefore, since your punitive discharge was determined to be free from error and appropriate, the Board also concluded that you were ineligible for a disability discharge, regardless of your mental health condition at the time, since your bad conduct discharge would have superseded any disability processing. Finally, based on the seriousness of the misconduct you committed, the Board found no error with the Marine Corps' decision to prosecute you for your misconduct vice administratively processing you for your personality disorder. In the Board's opinion, it was within the Commander's discretion to take either action and there was no evidence he abused his discretion by referring you to a special court-martial in 1981 since you were eventually convicted. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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,

11/2/2021

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Deputy Director

Signed by:

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