



separation for the reasons of misconduct due to drug abuse, commission of a serious offense, and pattern of misconduct. You elected an administrative hearing with representation by legal counsel, which recommended that you be separated under Other Than Honorable (OTH) conditions for the reason of drug abuse. Prior to your discharge, you received a second NJP for violation of Article 112a for wrongful use and possession of a controlled substance after having three positive urinalyses for cocaine in a period of 3 weeks. Your discharge was approved by Commander, Navy Region Southeast, and you were discharged, on 18 November 2004, with an OTH characterization of service.

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 desire to upgrade your discharge and your contentions that you suffered from a painful, chronic medical condition during your second enlistment for which you were routinely prescribed opioid medications. You assert that you developed a physical addiction and, after your prescription medications ended, led to your subsequent drug abuse misconduct. Additionally, you contend you have found a way to maintain sobriety and live without drugs and alcohol through post-discharge rehabilitation. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments or treatment records.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health (MH) condition affected your discharge, the Board also considered the AO. The AO states in pertinent part:

The Petitioner's complete service medical record was not available for review. Among the available documents, there is no evidence that he was diagnosed with a mental health condition during military service, although there is behavioral evidence of a potential substance use disorder. This is a condition that appears to have existed prior to enlistment, as evidenced by his pre-service substance use. Illegal substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it is possible that his misconduct could be attributed to illegal substance use, there is no evidence he was unaware of the potential for misconduct or was not responsible for his behavior. His personal statement is not sufficiently detailed to establish an alternate clinical diagnosis or a nexus with his misconduct. Additional records (e.g., the Petitioner's service record or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition other than a potential substance use disorder.

In response to the AO, you provided a statement stating you were gathering more information from your medical providers. However, you chose not to provide any further evidence.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple incidents of drug abuse. Although the Board found it compelling that your misconduct resulted from a medical condition that developed into a drug use disorder due to poorly managed prescription of medications, they noted you did not submit any medical records documenting your contended condition or your prescription history. Likewise, with respect to your contentions of post-discharge rehabilitation, the Board noted that, with the exception of character statements from your family, you did not submit any supporting records to document your substance use disorder or your efforts in achieving and maintaining sobriety. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition other than a potential substance use disorder. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor 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 that your request does not merit relief.

With respect to your contention that you desire to obtain benefits to assist in maintaining sobriety, the Board believes that you may be eligible for veterans' benefits that accrued during your first period of "Honorable" service. Whether or not you are eligible for benefits based on either period of service is a matter under the cognizance of the Department of Veterans Affairs (VA). If you have been denied benefits, you should appeal that denial under procedures established by the VA.

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 is attached 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,

8/11/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]