

characterization of service. However, on 10 January 1992, you received an additional NJP for absence from appointed place of duty and failure to obey a lawful order. As a result, the SA disagreed with the CO's recommendation and directed an Other Than Honorable (OTH) characterization of service due to a pattern of misconduct. On 6 February 1992, you were so discharged.

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 to include your contentions that you incurred PTSD and other mental health concerns during military service, your misconduct was due to illness and being singled out by the Chief, and your CO acknowledged your mistreatment but an administrative error resulted in your OTH characterization of service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 August 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly as he claims that his misconduct was due to unfair attention by his command. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering 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 could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you submitted a statement providing additional clarification of the circumstances of your case including a desire for Department of Veterans Affairs (DVA) benefits.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In

addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Additionally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. In reviewing your record, the Board found no administrative errors related to your assignment of an OTH characterization. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. 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 of service. 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.

Regarding your request for a DD Form 214 to be issued that reflects your first period of honorable service, the Board noted you were issued a DD Form 215 that appropriately documents the period of 7 November 1985 through 26 February 1990 as Honorable. Service regulations in effect during your period of service do not allow for the issuance of a separate DD Form 214 to document a prior period of active duty service upon reenlistment. However, the Board believes you may be eligible for VA benefits based on this period of honorable service. Please keep in mind, however, that any eligibility decisions related to VA benefits are under the sole discretion of the VA and should be addressed through your nearest regional VA office.

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,

9/13/2022

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Executive Director

Signed by █