



were sentenced to reduction to the rank of E-2, forfeiture of pay, and restrictions for 30 days. On 23 February 1987, you began a period of unauthorized absence (UA) which lasted one-day. On 16 May 1987, you began a second period of UA which lasted two hours. On 6 April 1987, you received nonjudicial punishment (NJP) for the period of UA. On 18 May 1987, you tested positive for use of a controlled substance-cocaine. On 26 May 1987, you began a third period of UA which lasted two days. On 2 June 1987, you received a second NJP for wrongful use of a controlled substance-cocaine and the period of UA. As a result, on 3 June 1987, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, pattern of misconduct, and drug abuse. On the same date, you decided to waive your rights. On 11 June 1987, your commanding officer recommended an Other Than Honorable (OTH) by reason of misconduct due to drug abuse. On 17 June 1987, the separation authority approved and ordered an OTH characterization by reason of misconduct due to pattern of misconduct. On 26 June 1987, you were 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that there were no provisions for substance abuse at the time of you were in service, you were young and did not understand the ramifications of your behavior or the long term effects, you have been working in special education for 15 years, and you were able to obtain post-discharge degrees. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition in military service. Prior to separation, he was evaluated and no mental health diagnosis was assigned. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement and provided medical records are lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core

values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board considered the additional evidence you submitted regarding post-discharge character but concluded that the favorable matters you submitted for consideration were also insufficient to outweigh the severity and nature of your misconduct. 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. While the Board commends your post-discharge accomplishments and good character, even in light of the Wilkie Memo and reviewing the record holistically, 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.

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,

10/26/2022

