



diagnosed with malingering and a personality disorder. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense and personality disorder. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense and personality disorder, with an Other Than Honorable (OTH) characterization of service. However, on 28 August 1995, you went UA for two days returning on 30 August 1995. On 31 October 1995, the SA approved the CO's recommendation and, on 5 December 1995, 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 and contention that you incurred a MHC while on active duty which might have mitigated your 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 8 August 2022. The mental health professional stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an extended inpatient hospitalization. The personality disorder diagnosis and determination of malingering were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by mental health clinicians over an extended period of close observation. A personality disorder is pre-existing to military service, and by definition, is neither incurred in nor exacerbated by military service. Unfortunately, he has provided no medical evidence in support of another mental health condition. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health diagnosis.

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 NJP, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of the command. Additionally, the Board noted your brevity of service when weighing your misconduct. Finally, the Board concurred with AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or 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. 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.

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,

10/6/2022

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Executive Director

Signed by: █