



deficiencies may result in disciplinary action or administrative separation. On 27 January 1991, you were awarded your second NJP for violating UCMJ Article 111, for driving under the influence of alcohol while on base. On 4 March 1991, after your second DUI in under a year, you were evaluated by medical professionals and diagnosed with alcohol abuse with “no evidence of dependency.” On 1 April 1991, you were notified that you were not recommended for reenlistment due to “Misconduct - Commission of Serious Offense” related to your DUI.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 1 April 1991 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is “Misconduct - Commission of Serious Offense,” your separation code is “HKQ,” and your reenlistment code is “RE-4.”

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: (a) your desire to upgrade your discharge character of service, (b) your assertion that you were suffering from undiagnosed PTSD, and (c) the impact that your mental health may have had on your behavior. For purposes of clemency and equity consideration, the Board noted the content of your post-service medical treatment by the Department of Veterans Affairs (VA).

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 10 August 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, other than an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his behavior. He has provided no medical evidence of his claims. His personal statement is insufficient to establish clinical symptoms or a nexus with his misconduct. 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

In response to the advisory opinion, you provided VA treatment records from July to August 2022 for “anxiety not otherwise specified (NOS)” and “psychosocial stress.” In one treatment record, you described incurring two assaults from a superior and other sailors. In another chart

note, you reported that “witnessed a superior slam another soldier into the ground for no reason and busted his lips...so now when I see an officer...I start to sweat, shake, and become nervous.”

After review of the VA treatment records, a qualified mental health professional issued another AO dated 6 September 2022. The AO noted in pertinent part:

This Advisory Opinion (AO) Rebuttal Response, like the previous AO, reference (a), will only address the mental health claims by Petitioner. The Petitioner has provided evidence in support treatment of nonspecific anxiety symptoms by the VA. There is no evidence of a diagnosis of PTSD or a trauma-related mental health condition. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.

The AO concluded, “it is my considered clinical opinion there is post-service 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 condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two DUIs, NJP, and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board also determined that your repeated misconduct was contrary to the Navy core values and policy. Further, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. The Board noted that there is no record that you raised mental health concerns during your separation process. Finally, 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. 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 an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

12/4/2022



Executive Director

Signed by: █