



11 October 1996, you were convicted at a special court martial for three specifications of UA, six specifications of missing ships movement, and wrongful use of a controlled substance. On 21 May 1997, you tested positive for the use of a controlled substance. As a result of the foregoing, on 22 May 1997, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to the commission of a serious offense, and drug abuse. On 4 November 2019, you waived your right to consult with counsel, and a hearing of your case before an administrative discharge board (ADB). On the same day, your commanding officer recommended your separation with an Other Than Honorable (OTH) character of service for drug abuse and commission of a serious offense. Subsequently, the separation authority approved the recommendation and directed your separation. On 25 June 1997, you were discharged with an OTH character of service by reason of misconduct due to drug abuse.

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 you suffered from depression and anxiety while on active duty, which serves to mitigate your misconduct. Additionally, you argue that you were never offered counseling and were assaulted by a Petty Officer. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but not supporting documentation describing post-service accomplishments.

In connection with your assertion that you suffered from mental health conditions, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted, and determined:

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 in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide 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 previous functioning in the military) 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 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."

In response to the AO, you provided additional evidence that documented a diagnosis of PTSD, unspecified.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your

SPCM and positive drug urinalysis, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. 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, 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. Further, the Board noted you provided no evidence to substantiate your contentions and determined the Navy had no obligation to send you for drug rehabilitation treatment unless there was evidence that you were drug dependent. The Board found no medical evidence that you were drug dependent prior to your discharge. Finally, with respect to your contention relating to mental health conditions, after considering your rebuttal evidence, the Board concurred with the findings of the AO that the objective evidence failed to establish that you suffered from a mental health condition that may mitigate your in-service 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 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 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 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,

11/28/2022

█