



of UCMJ Article 112(a), for wrongful use of a controlled substance. You did not appeal either NJP.

As a result of your repeated misconduct, on 20 May 1987, you were notified that you were being recommended for administrative discharge from the Navy by reason of Misconduct – Drug Abuse. You waived your right to consult with qualified military counsel and your right to present your case at an administrative discharge board. The day after receiving your notice of processing, you again went UA. Your commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the service with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to drug abuse. On 10 July 1987, you were discharged in absentia from the naval service.

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 to upgrade your discharge character of service and your contention that you were experiencing personal stressors during military service, which contributed to your misconduct. For purposes of clemency and equity consideration, the Board noted you provided supporting information regarding your mental health, specifically, documentation from the Social Security Administration, Office of Disability Adjudication and Review.

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 5 October 2022. The AO noted in pertinent part:

There is no evidence 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. He has provided evidence of post-service mental health conditions that are temporally remote to his military service and appear unrelated. Unfortunately, his personal statement and available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct, particularly given his pre-service substance use. Additional records (e.g., 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 condition.”

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

evidenced by your civilian conviction and two NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact it involved drug use and numerous periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Navy core values and policy, renders such service member unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. In making its determination, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a mental health condition. The Board highlighted that your misconduct was not only consistent throughout your service, but was also evidenced by your pre-service drug use. Although the SSA has designated you as disabled for their purposes, the Board found no evidence that those conditions were service connected or had any nexus to your misconduct while in the service. Further, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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 employment opportunities. Based on these factors, the Board determined your conduct constituted a significant departure from that expected of a service member 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,

12/14/2022

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