

Uniform Code of Military Justice (UCMJ) Article 86 (UA), Article 92 (Failure to obey lawful order), and Article 107 (False official statement). You were awarded restriction and extra duties, as well as 30 days correctional custody. That same day you were given an Administrative Counseling (Page 13) addressing the deficiencies in your performance and conduct, and again advising you that further deficiencies may result in disciplinary action or administrative separation. On 21 April 2004, you were awarded your second NJP for violating UCMJ Article 86 for an 8-day period of UA and Article 112(a) for wrongful use of a controlled substance. You did not appeal either NJP.

Immediately after your last NJP, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 4 June 2004, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

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) the impact your job had on your mental health, and (c) your contention that you were misled about the duties you would be performing upon entry into the naval service. For purposes of clemency and equity consideration, the Board noted the post-service medical diagnosis dated 10 May 2022.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO, which was provided to you on 2 September 2022. The AO noted in pertinent part:

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. 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 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 AO, you provided a letter from your associate dated 19 October 2022. He argued that the mental health professional who issued the AO was biased and should not be allowed to render an opinion because they did not have your entire medical service record, never served with you, and did not observe or evaluate you.

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 NJPs and periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a drug offense. The Board found the drug offense particularly troubling, as you were already counseled about your fraudulent enlistment for failure to disclose pre-service drug use and acknowledged the Navy's Zero Tolerance Policy. 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 illegal drug use is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. Further, the Board concurred with the AO that there is no evidence that you were treated or diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Regardless, the Board felt that even with post-service evidence of a mental health condition, there is insufficient evidence that there is a nexus between your misconduct and the mental health condition since your misconduct began almost immediately after your enlistment and spanned your entire term of service. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. 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,

11/30/2022

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Executive Director

Signed by: █