



Unfortunately, the majority of the documents pertinent to your SPCM conviction 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 22 August 1996 with a Bad Conduct Discharge (BCD), your narrative reason for separation is “Court-Martial Conviction,” your separation code is “JJE-901,” 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 your desire to upgrade your discharge and contentions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances that led to your BCD character of service. You assert that you are currently homeless and regret your actions while in the Navy. For purposes of clemency and equity 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 3 October 2022. The AO stated in pertinent part:

There is no evidence Petitioner 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 that would have warranted a referral for evaluation of a 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., 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 or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your two NJPs and SPCM conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related offense. 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. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition.

Additionally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. While the Board empathizes with your current situation, 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,

1/5/2023

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Executive Director

Signed by: █