

NJP for violating UCMJ Article 92, for failure to obey an order by wearing civilian clothes while in a duty status. You did not appeal these NJPs.

On 18 July 1980, you fell overboard and were subsequently treated by medical providers. You stated that you began feeling nauseated and went to the side rail, then blacked out and woke up in the water. You asserted that you did not intend to jump overboard.

On 30 July 1980, you received your third NJP for violating UCMJ Article 117, for provoking speeches and gestures. You did not appeal this NJP.

A psychiatric evaluation, on 6 August 1980, identified paranoid personality traits. On 27 August 1980, you received your fourth NJP for violating UCMJ Article 91, for disrespectful language towards a superior petty officer. On 6 October 1980, you received your fifth NJP for violating UCMJ Article 90, for disobeying a lawful command from a commissioned officer, Article 91, for disrespectful language towards a superior petty officer, Article 92, for disobeying a lawful order of a petty officer, Article 107, for making a false official statement, and Article 134, for communicating a threat. On 19 October 1980, you received your sixth NJP for violating UCMJ Article 128, for two specifications of assault. You did not appeal these NJPs.

Subsequently, you were notified that you were being processed for an administrative discharge by reason of misconduct. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. Prior to your separation, on 17 December 1980, you received your seventh NJP for violating UCMJ Article 86, for failure to go to your appointed place of duty, Article 92, for disobeying a lawful order of a petty officer, and Article 134, for communicating a threat. You did not appeal this NJP. On 18 December 1980, during a psychological examination, you threatened to jump off the ship every day until you got discharged. The doctor noted your emotionally unstable personality and recommended your placement in the brig or correctional custody unit. On 5 January 1981, you were discharged from the Navy for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

You previously applied to this Board for an upgrade to your characterization of service and you were denied relief on 5 February 2021.

The Board carefully considered all potentially mitigating and/or extenuating 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 characterization of service, (b) your contention that you were being harassed and physically assaulted due to reporting suspicious packages, (c) the impact that such harassment had on your mental health, and (d) the impact that your mental health issues had on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you did not provide evidence of post-service accomplishments or character letters.

In your petition, you contend that you incurred reprisal and physical assault after reporting suspicious packages, which contributed to your mental health concerns and subsequent misconduct. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 1 November 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. No mental health diagnosis was assigned, but problematic characterological traits were noted. His personality traits were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed. Problematic personality traits are pre-existing to military service by definition, and indicate lifelong characterological traits unsuitable for military service. Post-service, he has submitted evidence of a diagnosis of PTSD that is temporally remote to his military service. Unfortunately, it is difficult to attribute this diagnosis to his military service, given the length of time elapsed and the inconsistencies with his service record. It is difficult to attribute his behavior to PTSD avoidance when he continued to make threats regarding jumping from the ship if he were not separated. His in-service misconduct appears to be consistent with his problematic personality traits, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 Ph.D. 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 a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions regarding mental health. Specifically, the Board felt that your misconduct, as evidenced by your seven NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved communicating threats and incidents of assault. 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 the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that you were appropriately referred for psychological evaluation during your time in service, and while no mental health diagnosis was assigned, problematic characterological traits were noted. Problematic personality traits are pre-existing to military service by definition, and indicate lifelong characterological traits unsuitable for military service. The Board noted that you had a history of acting out and disruptive behavior, so much so that a medical professional determined that you would continue to be an administrative burden to the Navy unless placed in the brig or the correctional custody. You explained that you felt discriminated against for "bucking the system" because of your desire to get out of the Navy, to include threatening to jump off the ship every day until your discharge. The Board felt that your post-service diagnosis of PTSD is temporally remote to your military service, which made it difficult to attribute this diagnosis to your military service, given the length of time elapsed and the inconsistencies with your service record. The Board felt that your in-service misconduct appears to be consistent with your

problematic personality traits, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service.

Throughout your disciplinary processing, you never raised concerns of harassment or retaliation after reporting suspicious packages. You did not appeal any of your seven NJPs and, after consulting with qualified counsel, you waived your right to present your case at an administrative separation board. Based on these factors, the Board concluded that your misconduct was not due to PTSD or other mental health-related symptoms. The Board found 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.

The Board 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. Therefore, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that 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,

3/5/2023

█
█

Executive Director

Signed by: █