



On 2 February 2007, you were notified of the initiation of administrative separation processing in absentia by reason of “Misconduct (AWOL) and acknowledged your rights in connection therewith. You were notified that you were being processed with an Other Than Honorable (OTH) characterization of service. You waived your right to consult with a qualified counsel and your right to present your case at an administrative board. Subsequently, you were discharged from the Navy, on 2 February 2007, with an OTH characterization of service and assigned an RE- 4 reentry code.

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 suffering from undiagnosed mental health conditions while in service due to stressful life events, and (c) the impact that your mental health had on your conduct. In your petition, you contend that you incurred PTSD and other mental health conditions during military service, which might have mitigated your discharge character of service. You explain that you only had 4 months left on your contract, and assert that you were emotionally unstable after a divorce was filed and an incident occurred related to your child. You assert that you didn’t intend to go absent without leave (AWOL), but then were scared to return. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments and character.

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 10 November 2022. The Ph.D. 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, available records are not sufficiently detailed to establish clinical symptoms during military service or provide a nexus with 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 Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of 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 the potentially mitigating factors were insufficient to warrant relief. The Board felt that your misconduct, as evidenced by your significant period of UA, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and the impact that life stressors had on your mental health during service. The Board considered the seriousness of your misconduct and the fact that it involved missing ships movement. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command and on mission readiness. The Board determined that your conduct was contrary to Navy core values and policy, and was detrimental to mission success.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Nor have you provided any mental health treatment records in support of your contention. While the Board acknowledged that you might have been dealing with personal life stressors, they felt that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. 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 of service.

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. 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,

1/19/2023

