



You were notified of processing for administrative separation due to a pattern of misconduct and commission of a serious offense. You waived all rights afforded incident to separation processing, and your commanding officer recommended separation under Other Than Honorable (OTH) conditions. Upon approval, you were discharged for a pattern of misconduct with an OTH characterization of service on 15 December 1997.

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 your contentions that you served honorably in all respects, to include accepting responsibility for your misconduct, but that you suffered from an untreated mental health condition and, therefore, believe you should not continue to be punished for the resulting actions. Additionally, you submit that you have used the skills learned during your military service to become a productive citizen, to include working in a leadership role as the branch manager at a large wholesale retailer, as well as being a responsible father. For purposes of clemency and equity consideration, the Board noted you provided a psychological evaluation but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you also contend that post-traumatic stress disorder (PTSD) or another mental health (MH) condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with PTSD or another 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 of a mental health condition that would have warranted a referral for evaluation. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service and has been deemed to be related in part to experiences from his military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during military service 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 post-service evidence of a diagnosis of PTSD 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 that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered your drug abuse and determined that that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the

military. Additionally, the Board concurred with the AO with regard to lacking sufficient evidence to determine whether or how your post-service diagnosis of PTSD might have contributed to your in-service misconduct. To the extent that you feel your post-service character merits consideration of clemency, the Board noted that you did not submit any evidence in support of this contention. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and good character, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 the 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 is attached 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,

1/24/2023

