



On 11 January 2007, you began a period of UA and missed ship's movement on 16 January 2007. While in a deserter status, not in line of duty, you were treated for multiple gunshot wounds at a civilian hospital in █, and then transferred to Naval Medical Center █ for additional care. On 5 April 2007, after return to military control, you were found guilty at NJP of violating UCMJ Article 86, for two periods of UA, Article 87, for missing ship's movement, and Article 123, for defrauding the government by falsifying a medical document. You did not appeal this NJP.

On 5 April 2007, your command initiated administrative separation processing based on commission of a serious offense and pattern of misconduct. You were notified that the least favorable characterization of service would be Other Than Honorable (OTH). You acknowledged and waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. The Separation Authority directed your administrative discharge and, on 18 May 2007, you were discharged with an OTH characterization by reason of misconduct due to commission of a serious offense and issued 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 assertion that you were suffering from undiagnosed mental health conditions during service, (c) your contention that your misconduct was caused by your mental health conditions, and (d) your desire for veterans benefits. For purposes of clemency and equity consideration, the Board noted that provided an October 2021 Department of Veterans Affairs (VA) Compensation and Pension Exam listing diagnoses of PTSD and Unspecified Depressive Disorder.

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 15 November 2022. The Ph.D. noted in pertinent part:

There is no evidence 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. Post-service, the VA has granted service connection for PTSD and another mental health condition related to his in-service gunshot wound. Unfortunately, there is insufficient evidence to provide a nexus with his 2006-2007 misconduct, as the traumatic precipitant occurred after the misconduct. There is insufficient evidence to attribute his 2005 misconduct to a mental health condition. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD and another mental health condition that have been attributed to military

service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you explained that your depression, anxiety, and PTSD began after your head injury related to the 2005 assault.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your two NJPs, 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 your post-service service medical treatment records. The Board considered the seriousness of your repeated misconduct and the fact that it involved assault and significant periods of UA. 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 your conduct was contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that there is no evidence 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. Your in-service medical records disclose concerns related to the shooting, which occurred when you were in a UA status and not in the line of duty. At no time did you report mental health issues related to a head injury in 2005. There is no diagnosis of a TBI either during service or post-service. Although you provided post-service diagnoses of PTSD and Unspecified Depressive Disorder, there is insufficient evidence to provide a nexus to your misconduct, as the traumatic precipitant occurred after the misconduct. Therefore, the Board found 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.

Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board carefully considered the mitigation evidence you submitted, 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 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,

1/13/2023



Executive Director

Signed by: █