



evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 4 February 2005, with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Misconduct - Drug Abuse," your reentry code is "RE-4," and your separation code is "HKK," which corresponds to misconduct due to drug abuse.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 2 July 2008, based on their determination that your discharge was proper as issued.

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 change your discharge character of service and contentions that your mental health issues were not considered in determining your character of service and you received an 80 percent disability rating for service connected mental health issues. For purposes of clemency and equity consideration, the Board noted you provided documentation from the Department of Veterans Affairs but no documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 22 November 2022. The AO noted in pertinent part:

The Petitioner submitted VA Disability rating whereby he was granted 70% service connection for Dysthymic Disorder. He did not submit any supporting documents regarding the etiology/rationale for the diagnosis. 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, his personal statement is not sufficiently detailed to establish clinical symptoms 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug 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 considered the likely negative effect your misconduct had on the good order and discipline of your command. Finally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As noted in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Additionally, be advised decisions reached by the Department of Veterans Affairs (VA) to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization of 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. 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 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,

1/26/2023

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Executive Director

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