



in a diagnosis of immature personality disorder, characterized by sporadic misuse of alcohol and drugs. You were formally counseled regarding retention with warnings of possible separation for further misconduct and, on 12 February 1981, subject to nonjudicial punishment (NJP) for a violation of Article 92 of the Uniform Code of Military Justice due to violation of a General Order or regulation by using a controlled substance. A substance abuse treatment consultation in April 1981 diagnosed you with multi-drug abuse and recommended that you receive in-patient rehabilitation treatment, citing your admission of having used marijuana at least three times per day since November 1980, having begun using cocaine in January of 1981, and noting that you were likely a danger to yourself and others. A psychiatric evaluation, on 29 June 1981, diagnosed you with an atypical Adjustment Disorder (AD) and a need to rule out Personality Disorder (PD), indicating that you needed counseling to resolve the extreme negativity you felt toward your stepfather, which included an expressed plan to kill him upon your release. Again, they found you fit for full duty, with no signs of neurosis, psychosis, or disability PD and recommended that you continue substance abuse treatment.

Following your release, you again absented yourself without leave from 14 July 1981 until 30 October 1981. Upon your return, you were charged and tried before Special Court-Martial (SPCM) for a violation of Article 86 due to unauthorized absence (UA), and your sentence included a punitive discharge. In the separation physical conducted during your confinement, you endorsed depression/excessive worry, loss of memory, and dizziness as medical symptoms but were found fit to separate. After your release from confinement, you again absented yourself and were returned to military custody following apprehension. Prior to beginning your appellate leave, you were tried by Summary Court-Martial (SCM) for UA and served an additional period of confinement. After your appellate review of your case was completed, your Bad Conduct Discharge (BCD) was effected on 11 April 1983.

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 suffered from serious mental and emotional issues during your enlistment due to your stepfather's actions, you entered service during your minority, these factors caused you to absent yourself several times and develop problems with drug use. You also cite to additional trauma in having been involved in an automobile accident that injured your then-girlfriend and killed her aunt. However, you state that you have since matured and become a productive member of your community, to include raising your family and maintaining gainful employment. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner contends that he suffered from mental health issues stemming from historical family problems and trauma that resulted in his misconduct. There is evidence that he was diagnosed with Immature Personality Disorder, Adjustment Disorder and significant substance abuse with several different substances. Immature Personality Disorder and Adjustment Disorder are diagnoses that are given when one is responding to situational stressors in inadequate ways and is expected to improve over time, as opposed to an organic or more serious

diagnosis that may warrant a higher level of care. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, SPCM, and SCM, 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. Additionally, the the Board concurred with the AO in regard to your mental health contentions and found the available evidence insufficient to establish that you suffered a condition which mitigated your misconduct and resulting punitive discharge. The Board observed that your record does, however, indicate that you suffered severe childhood trauma and that your application asserts you have overcome both that as well as the additional issues surrounding the misconduct while resulted in your discharge. However, the Board concluded that it would additional supporting evidence of these contentions to potentially consider your post-discharge character with respect to an upgrade of your discharge based on clemency. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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,

1/27/2023

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Executive Director

Signed by: █