



ideation.” You were released back to duty, after two days of observation, but recommended for administrative separation should your conduct merit it.

On 13 December 1977, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 92 of the Uniform Code of Military Justice (UCMJ) for disobeying a lawful order, specifically the uniform policy. On 1 August 1978, you again received NJP for violating Article 86 (Unauthorized Absence (UA)) of the UCMJ for being UA from 17 July 1978 until 20 July 1978. On 30 May 1979, you were convicted by a special court-martial (SPCM) for two period of UA covering 28 August 1978 – 27 February 1979 and 31 March 1979 – 5 April 1979. You were sentenced to reduction to E-1, forfeiture of pay for two months, confinement with hard labor for two months, and a Bad Conduct Discharge (BCD). On 17 July 1979, your CO granted you appellate leave pending completion of appellate review of your SPCM. On 14 December 1979, the Navy Court of Military Review affirmed your special court-martial findings and sentence. You subsequently were discharged from the Navy, on 9 April 1980, with a BCD.

In 1981, you petitioned the Naval Discharge Review Board (NDRB) requesting an upgrade to your discharge to General under Honorable conditions due to having marital problems in service, not being able to adjust to military life, and claiming that you should have been administratively discharged in 1978. The NDRB denied that request noting you did not provide any evidence that you had marital problems during your active duty service nor that you requested a hardship discharge prior to going UA.

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 for a disability discharge and contentions that you deserve a medical discharge because you suffered from mental health conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 and SPCM outweighed these mitigating factors. In making this finding, the Board noted there was no evidence of a mental health condition in-service and you provided no evidence of a mental health diagnosis post-service. Finally, the Board noted you provided no evidence to substantiate your contentions. 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.

Regarding your request for a disability discharge, as previously discussed, the Board found no evidence that you suffered from a mental health condition incurred or aggravated as a result of your active duty service. Regardless, even if such evidence existed, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing

to supersede disability processing. 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,

4/4/2023

