



were thirteen. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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 31 August 2023, which was previously provided to you. The AO noted in pertinent part:

Petitioner contended he incurred PTSD after witnessing a close friend's death by suicide when he was 13, which contributed to his in-service misconduct. He claimed he incurred a TBI at age 19 "and suffered a brain hemorrhage having to take steroids to reduce the swelling while in a neck brace for weeks." He submitted statements in support of his pre-service experiences, which contributed to mental health difficulties in service.

There is in-service evidence of an alcohol or substance use disorder, for which the Petitioner received treatment. There is no evidence of TBI or PTSD in-service, and the Petitioner denied any history of mental health concerns or TBI upon enlistment. He has provided no medical evidence in support of his claims. While the Petitioner and his family now claim that pre-service mental health and TBI symptoms influenced his in-service behavior, these claims are temporally remote from military service and likely influenced by alterations in memory with the passage of time. Available evidence indicates that the Petitioner's in-service misconduct represented a continuation of pre-service problematic behavior with alcohol and substance use. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of TBI or PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to TBI, PTSD, or another mental health condition, other than his alcohol and substance use disorders."

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 NJPs, 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 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. The Board was not persuaded by your contention that your positive drug test for cannabinoid was due to the use of pseudoephedrine. Specifically, the Board considered that you were given the opportunity to refuse NJP and demand trial by court-martial to dispute the positive drug test; an option you did not pursue. You also waived your right to an ADB, which was another opportunity to dispute the positive test results. The Board further noted that you did not submit in your application package any evidence of the potential for pseudoephedrine to have resulted in a false positive

drug test. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command and that you were given opportunities to address your conduct issues but you continued to commit misconduct.

Additionally, the Board considered your contention that your misconduct was mitigated by your PTSD. The Board concurred with the AO and determined there is insufficient evidence of TBI or PTSD that may be attributed to military service and there is insufficient evidence to attribute your misconduct to TBI, PTSD, or another mental health condition, other than your alcohol and substance use disorders. Further, the Board concurred with the AO that your in-service misconduct represented a continuation of pre-service problematic behavior with alcohol and substance use.

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 carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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 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, \_\_\_\_\_

11/6/2023

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Executive Director

Signed by: █