



You later reenlisted in the Navy and began another period of active service on 12 July 1976. On 19 July 1976, an investigation into your fraudulent enlistment was initiated as a result of your failure to disclose your previous military service in your enlistment application. On 20 July 1976, you were notified of your pending administrative processing for fraudulent enlistment, at which time you elected your right to have your case heard at an administrative discharge board (ADB). On 17 August 1976, an ADB was held and found you fraudulently enlisted, yet by a vote of 2 to 1, recommended you be retained in the Navy. Subsequently, on 10 September 1976, you received your first nonjudicial punishment (NJP) for a period of unauthorized absence (UA). On 13 January 1977, you were counseled concerning your frequent tardiness to quarters. You received four additional NJPs from 10 February 1977 to 23 November 1977, for infractions of UA, missing ship's movement, and failure to obey a lawful order. On 14 March 1978, you were notified of your pending administrative separation proceedings by reason of unsuitability based on a diagnosis of Antisocial personality.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 28 March 1978 with a GEN characterization of service, your narrative reason for separation is "Unsuitability," your separation code is "JMB," and your reenlistment code is "RE-4."

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 characterization of service and your contentions that: (1) your right knee was severely injured in service and had to be surgically replaced, (2) you were diagnosed with PTSD and had to be hospitalized, (3) there was an accident on the flight deck where you worked and you knew the pilot who died which caused you anxiety, and (4) you are requesting this change because you are now classified 100% service connected disabled and you want to alleviate your property taxes for your Department of Veterans Affairs (VA) approved loan. For purpose of clemency and equity consideration, the Board noted you provided a personal statement, VA documents, and copies of your DD Form 214s and 215s.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

The Petitioner submitted VA rating indicating 100% service connection for PTSD that is temporally remote to service. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 conclude, "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 NJPs, 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. The Board noted that you were given multiple opportunities to correct your behavior but chose to continue to commit misconduct. Additionally, the Board agreed with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. Further, decisions reached by the VA to determine if former service members 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 service member is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization. Finally, absent a material error or injustice, the Board declined to summarily upgrade your discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded that significant negative aspects of your service outweigh the positive aspects and continue to warrant a GEN 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 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,

11/19/2023

