



Municipal Court of violation of driving under the influence of alcohol (DUI). On 31 January 1992, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) and failure to obey a lawful order. Consequently, on 12 February 1992, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to commission of a serious offense, civilian conviction, and Alcohol Abuse Rehabilitation failure. You waived your rights to consult counsel or to have your case heard by an administrative discharge board (ADB but elected to submit a statement to the separation authority. In your statement, you requested consideration of your time served in both Operation Desert Shield and Desert Storm and stated that that you did not believe your service was dishonorable. Further, you admitted that you made a mistake and received a citation for driving a motor vehicle under the influence of alcohol, and that you failed to complete the Level II program. The Separation Authority considered your statement and directed your discharge with an OTH characterization of service. You were so discharged on 16 April 1992.

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 characterization of service to qualify for Department of Veterans Affairs (VA) benefits, and your contentions that you were suffering from mental health issues and were self-medicating to cope, you did not realize you would not be able to complete the alcohol abuse program when you accepted your discharge, and you only experienced mental health issues after returning from █. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 16 November 2023. which was previously provided to you. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. He stated that he was not allowed to finish substance abuse counseling which might have made a difference in his discharge outcome, however in a statement, he wrote, "I freely admit that I failed to complete Level II Programming which it was my duty to complete." 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 a civilian DUI conviction and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given opportunities to address your conduct issues but you continued to commit misconduct. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

Additionally, 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 the AO noted, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 an OTH characterization. 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. 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,

1/24/2024

