



Article 91 (disobey lawful order). You received your second NJP, for two instances of UA, on 29 April 1983. Your third NJP was held on 5 August 1983 for violating Article 91. Your fourth NJP for UA took place on 12 August 1983 for two instances of UA. You received your fifth NJP, on 25 August 1983, for UA from 16 to 23 August 1983 and violating Article 87 (missing ship's movement) of the UCMJ. On 11 October 1983, you were convicted at summary court-martial for 22 days of UA from 30 August to 19 September 1983. On 18 January 1984, you were convicted by a special-court martial for 25 days UA between 4 December and 29 December 1983 and missing ship's movement on 4 December 1983.

On 28 February 1984, you underwent a psychological evaluation, were diagnosed with Passive-Aggressive Personality Disorder, and recommended for separation. On 7 March 1984, you were notified of your Commanding Officer's recommendation for separation due to misconduct, missing ship's movement on three separate occasions, with an Other Than Honorable (OTH) characterization of service. Ultimately, you were discharged from the Navy on 21 June 1984 with an OTH characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states misconduct due to the commission of a serious offense as the narrative reason for separation.

For this petition, you contend that you incurred post-traumatic stress disorder (PTSD) from events in-service to include witnessing the suicide of a Marine and a fatal motorcycle accident. You also claim that you sustained three traumatic brain injuries (TBI) in-service resulting in a loss of consciousness. You argue your PTSD and TBI led to your misconduct and you requested a military medical retirement and an upgrade of your characterization of service to Honorable. You submitted a June 2011 neuropsychological evaluation noting cognitive difficulties after a motor vehicle accident in October 2008.

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 discharge upgrade or disability discharge and contentions that you deserve a medical discharge because you suffered from conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you provided letters of support from family members and documentation of post service accomplishments.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, which might have mitigated your discharge character 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:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Petitioner has provided no medical evidence to support his claims of a diagnosis of PTSD. Although there is a record of a pre-service head injury and the Petitioner has claimed he incurred additional TBIs during military service, available records do not show a pattern of seeking medical evaluation or treatment for symptoms or

signs indicative of residual symptoms of TBI during his military service. Post-discharge records indicate any potential TBI symptoms did not become impairing until after the 2008 accident.

The AO concluded, “[t]here is insufficient evidence of diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to TBI or PTSD.”

You submitted a response to the rebuttal stating that you were diagnosed with a mental health condition – Passive Aggressive Personality Disorder. You also claimed that you were on the ship for a limited time because you were repeatedly harassed while on the ship, resulting in your frequent absences. In a response to the rebuttal evidence, the AO was revised as follows:

I have reviewed Petitioner’s additional documents. Petitioner has submitted evidence he was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Post-service, civilian family members have attributed his behavior to PTSD. However, his in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service.

The revised AO concluded, “There is in-service evidence of a diagnosis of a mental health condition. There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than alcohol use disorder.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCM, and SPCM, 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. Further, the Board concurred with the AO and determined that there is insufficient evidence to attribute your misconduct to a mental health condition, other than alcohol use disorder. The Board noted there was insufficient evidence of any traumatic brain injuries while in-service; nor was there any evidence that you experienced any cognitive difficulties while in-service. Moreover, the Board found the evidence did not show a connection between your misconduct and a PTSD or TBI condition given that your misconduct occurred prior to your claimed in-service TBIs and continued throughout your military career. 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.

Regarding your request for a disability discharge, the Board noted you were ineligible for disability benefits based on your misconduct based discharge that resulted in an OTH. Based on the Board's finding that you were appropriately discharged for your misconduct and issued an OTH, the Board found no basis for granting your request for a change in your narrative reason for separation. 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,

2/1/2024

