



Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 20 September 2019, based on their determination that your discharge was proper as issued.

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 and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you were abused by your father and step-father, that your colorblindness was missed until boot camp where you were told you didn't qualify for your rating and could either leave or accept deck seaman and strike for another rating in six months, and that when you got to your first ship you were told it would be eighteen months before you could qualify for a new rating, so you tried to get kicked out of the Navy by doing drugs and going UA, and when that didn't work, you jumped off the ship. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments.

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

Limited Department of Veterans Affairs (VA) mental health records from March 2023 indicate that, when he was evaluated for eligibility for humanitarian service, he endorsed symptoms of an affective disorder such as depression, an adjustment disorder, and a personality disorder. He did not endorse symptoms of PTSD, alcohol or substance use disorder, or another psychiatric disorder.

Petitioner contended childhood physical and sexual abuse contributed to mental health concerns in military service.

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, the VA has noted mental health symptoms that are temporally remote to military service and appear unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion 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."

In response to the AO, you provided a personal statement that supplied additional clarification regarding the circumstances of your case and reiterated your arguments of mitigation.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced your SPCM, 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 also considered the likely negative impact your misconduct had on the good order and discipline of your command. Further, 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 or mitigate misconduct. As explained in the AO, your VA diagnosis is temporally remote to military service and appears unrelated. Additionally, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Additionally, the Board was not persuaded by your contention that your misconduct was mitigated by your disappointment in not physically qualifying for the electronics field. 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 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,

12/13/2023

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