



1970, you were incarcerated in civilian prison for “one to three counts larceny, one count violation of Firearms Act, non-support, and illegal parking.”

On 29 June 1970, you submitted a written request for separation for the good of the service (GOS) in lieu of trial by court-martial for three specifications of UA totaling 167 days. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be under Other Than Honorable (OTH) conditions. The separation authority approved your request, and directed your commanding officer to discharge you with an OTH characterization of service by reason of good of the service. On 28 July 1970, you were so discharged.

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 character of service and contentions that: (1) upon your return from Vietnam, you were concerned with your deteriorating mental health and a nation that “spat” upon you and shunned you for serving your country with distinction, (2) you were awarded several medals because of your service in Vietnam, and (3) you have several of the presumptive diseases and conditions associated with Agent Orange and you are unable to file for disability compensation based solely on your discharge. You assert that since your discharge, you have married, become a father to a son, and you have worked your entire life. For purposes of clemency and equity consideration, the Board noted you provided a summary of your military information, health care progress notes, and an advocacy letter; but no supporting documentation describing post service accomplishments.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 21 November 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, he has submitted evidence of a three visits to a Veterans Center in which he received treatment for PTSD attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct, particularly as he had UA prior to his combat deployment and the majority of his UA following deployment was related to civilian incarceration for criminal activities not typically associated with PTSD symptoms. It is possible that his disobedience and some of his UA post deployment could be attributed to PTSD symptoms of irritability and avoidance, but wrongful appropriation of a jeep is not a typical PTSD symptom. 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 some post-service evidence from a Vet Center of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another 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 your civilian conviction, NJPs, and GOS request, 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. Additionally, the Board noted that the misconduct that led to your GOS request was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Convening Authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO and determined that while there is some post-service evidence from a Vet Center of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute all of your misconduct to PTSD or another mental health condition. As the AO explained, the available records are not sufficiently detailed to establish a nexus with all of your misconduct. Additionally, there is no evidence that you were diagnosed with a mental health condition in military service. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, 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. 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,

1/22/2024

