



claimed you wanted to stay in the Navy but didn't want to shoot anybody. You were deemed fit for full duty, not suicidal, with no evidence of mental disorder, and traits of borderline personality disorder.

On 3 May 1991, you commenced a thirty-two-day period of unauthorized absence (UA) that ended in your surrender on 4 June 1991.

On 21 June 1991, you received non-judicial punishment (NJP) for that thirty-two-day period of UA and for missing ship's movement on 6 May 1991. On 23 July 1991, you commenced a fourteen-hour period of UA that ended in your surrender to Naval Hospital █, where you claimed you were urged by friends to get help and momentarily forgot about ship's movement. You spent seven days in observation after reporting suicidal thoughts. You denied any recent stressors or having a suicide plan and were diagnosed with a personality disorder with immature and borderline features, fit for full duty, but unsuitable for military service. On 25 September 1991, you reported to medical after claiming at Executive Officer's Inquiry (XOI) that you had taken an overdose of sleeping pills two weeks prior and that was why your fellow command members couldn't wake you up that day.

On 26 September 1991, your ship deployed in support of Operation Desert Storm. On 29 October 1991, you received NJP for three specifications of failure to obey a lawful order and willful disobedience of a superior commissioned officer.

On 2 April 1992, your ship returned to homeport and, on 2 July 1992, you commenced a four-day period of UA that ended in your surrender onboard your ship. On 6 July 1992, you received NJP for that four-day period of UA and for use and possession of marijuana.

Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to pattern of misconduct and drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 13 July 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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that there were extenuating circumstances surrounding your discharge, you have been diagnosed with PTSD and anxiety related to your military service, you received commendations and high performance evaluations that are inconsistent with the willful and conscious acts of misconduct attributed to your service, and you are need of Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 24 October 2023. which was previously provided to you. The AO noted in pertinent part:

The Petitioner submitted an August 2022 Department of Veterans Affairs (VA) PTSD Examination, which described traumatic stressors of an assault and witnessing an explosion resulting in fatality, and granted service connection for treatment purposes for PTSD, effective September 2022. He submitted a statement from his spouse in support of his mental health symptoms.

Petitioner 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, and the psychological evaluation performed. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, which appears consistent with characterological defects, rather than evidence of PTSD or another mental health condition. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition other than personality disorder."

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 NJPs, 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct. Therefore, the Board was not persuaded by your argument that your positive contributions outweighed your misconduct. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. Finally, the Board concurred with the AO and determined that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition other than personality disorder.

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,

1/17/2024

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