



alcohol consumption, but you denied any problems with the law related to alcohol use. On 15 May 1998, you were discharged from the Navy based on misconduct (drug abuse) with an Other than Honorable (OTH) characterization of Service and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service and change your narrative reason for separation, (b) your assertion that you were struggling with undiagnosed mental health conditions during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) following your participation in the recovery efforts of a civilian plane crash in August 1997. You assert that you abused alcohol to cope with your PTSD symptoms, which contributed to your marijuana use while under the influence of alcohol. In support of your request, you provided a Veterans Center Evaluation covering sessions in August and September 2022, which diagnosed you with PTSD. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 27 November 2023. The Ph.D. noted 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. Post-service, the VA has determined a temporally remote diagnosis of PTSD that has been attributed to military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given his pre-service alcohol use. 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 Ph.D. 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 a possible alcohol use disorder."

The Board considered your response to the advisory opinion wherein you argue that the pre-service misconduct is remote to your service and is not relevant to the Board's consideration of your service characterization. You assert that your subsequent alcohol use and accidental drug use was a direct response to the trauma of the plane crash. You explain that there is no military record of substance dependence because you were unaware of your own destructive behavior at the time of the misconduct. You highlight the assessment factors laid out in the Kurta memo and apply them to the circumstances in your case.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave



liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that drug abuse is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. The Board felt that your post-service diagnosis from the VA is temporally remote to your service and fails to draw a sufficient nexus to your underlying misconduct. The Board also found your pre-service DUI relevant, because it demonstrates you had a history of alcohol related misconduct prior to service, which continued during service. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

2/1/2024

