



another Sailor, absence from your appointed place of duty, failure to obey order or regulation, destruction of government property and dishonorably failing to pay said debt. Additionally, you were issued an administrative remarks (Page 13) counseling retention warning documenting your deficiency in poor military performance and conduct as evidenced by your NJP of 21 November 2001. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and administrative separation processing. On 15 March 2002, you received a second NJP for wrongful use of amphetamine, methamphetamine, and marijuana.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense, pattern of misconduct, and drug abuse. You waived your procedural right to consult with military counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to pattern of misconduct. On 23 April 2002, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 10 January 2007, 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, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service to Honorable to allow you to have full Department of Veterans Affairs benefits for your service-connected disabilities. The Board considered your contentions that: (1) the cause of your PTSD, alcohol and drug abuse was due to the things you witnessed while serving in Continental United States, as well as being deployed overseas in the Persian Gulf, (2) you experienced emotions, repetitive images in your nightmares, and disturbing memories from your deployment that you could not get over, (3) you felt isolated, alone and scared as no would listen to you, (4) you consumed alcohol more than you wanted to, to try and relieve the emotional damage you were going through, (5) the emotional and physical stress was unbearable for you at a young age, (6) you were bullied, tormented, tortured, abused, and left confused about why you joined, (7) you do not have a pattern of drug use; you never used drugs again after that, and (8) you were kicked out with no offers for help. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and documents from your service record 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 28 December 2023. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any

psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms 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) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a 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 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. Additionally, 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. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. There is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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. Furthermore, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. 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 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,

3/5/2024

