



commenced a period of unauthorized absence that ended in your surrender on 6 July 1998. You subsequently received non-judicial punishment (NJP) for that period of UA.

On 27 July 1998, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). On 12 August 1998, you received a separation physical where you denied any mental health symptoms. The Separation Authority directed your discharge with an OTH characterization of service and you were so discharged on 31 August 1998.

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 characterization of service and your contentions that you experienced a traumatic event while enlisted that resulted in PTSD, used drugs and alcohol to deal with the resulting symptoms, were not offered assistance or treatment from the Navy, have been sober for 19 years, earned your Associate's degree, have a wife and son, and have not had any issues since you got sober. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letters, resume, and college transcript you provided.

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 13 December 2023. The AO stated in pertinent part:

Petitioner claimed he incurred PTSD during military service, and that he used alcohol and marijuana to alleviate his symptoms. He submitted an April 2018 PTSD evaluation from a civilian mental health clinician that listed his precipitant trauma as "discharge court martial from the Navy." He provided a statement of support from his spouse and evidence of character and post-service accomplishment.

There is no evidence that he was diagnosed with a mental health condition in military service. He has submitted evidence, temporally remote to his military service, of a diagnosis of PTSD attributed to military service. It is not clear how his precipitant event rises to the criteria of trauma. Additionally, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given his pre-service marijuana use that appears to have continued in service, and his statements during his PTSD evaluation that his traumatic precipitant was the court martial consequence of his in-service 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 AO concluded, "it is my clinical opinion there is insufficient evidence 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."

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 SCM, 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. Further, the Board noted you served less than one year on active duty, during which you were court-martialed and received NJP, after reporting to your first command.

Additionally, the Board concurred with the AO determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. The Board discussed your contention that you experienced a “traumatic event” that resulted in PTSD and that led to your drug use. The Board further noted that, as mentioned in the AO, you indicated the traumatic event was your SCM, which was, in fact, a consequence of your drug use. Therefore, the Board was not persuaded by your claim that your drug use was a result of the trauma of receiving a SCM.

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 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,

2/14/2024

