



You received a second NJP, in November 1989, for two additional periods of UA as well as a violation of Article 92 for disobeying a lawful order from a superior noncommissioned officer. The following month, in December 1989, you received a third NJP for a violation of Article 134 due to your failure to sign in properly, after which you deployed in support of security operations in ██████████. You received your fourth and final NJP, on 25 May 1990, for an additional period of UA and were again issued administrative counseling regarding your frequent periods of UA as well as financial irresponsibility. This warning advised you to place the highest priority on work and to not get carried away with liberty.

On 21 August 1990, your record documented a call to your next-of-kin, following a period of UA, with a subsequent unit punishment book entry documenting not only another violation of Article 86, UA, but also an Article 87 violation for missing your company's movement to ██████████. Following your return from this absence, you were placed into pre-trial confinement; however, you were subsequently notified of administrative separation proceedings for misconduct due to commission of a serious offense and a pattern of misconduct in light of your four NJPs and subsequent UA period. After consulting legal counsel, on 11 November 1990, you elected to waive your right to a hearing before an administrative separation board. The recommendation for your discharge under Other Than Honorable (OTH) condition was approved on 11 December 1990 for the primary reason of pattern of misconduct. You were so discharged, on 5 January 1991, with proficiency and misconduct marks notably below the 4.0 threshold which would otherwise have been required for an Honorable discharge.

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 and your contentions that you experienced mental health concerns due to your grandfather's death during your deployment to ██████████, you were unable to attend the funeral in spite of having received a Red Cross Message, you experienced anxiety, depression, and feelings of helplessness due to your inability to be with your family or to help your grandmother during that time, and this led to a loss of control over your behavior. For purposes of clemency and equity consideration, the Board noted you submitted evidence of post-discharge character and accomplishments, to include four character letters and a personal statement that you have been employed for over 20 years by the state of ██████████ and currently work at a Veterans Hospital as a nurse assistance, that you coach children's sports and support youth scouting efforts, and that you volunteer alongside your family members with your church to provide veteran support in feeding the clothing the homeless.

Because you contend in part that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, which occurred before and after his ██████████ deployment. 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, "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."

After thorough review, the Board concluded these 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 found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO regarding not only the overall lack of evidence of a mental health diagnosis but, more significantly, the fact that the timing of much of your misconduct occurred prior to your deployment and, therefore, prior to your purported mental health trigger. Therefore, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit and determined you should be held accountable for your action.

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 on 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 the 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 is attached 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,

2/26/2024

